

SUBJECT INDEX

	Page
ARGUMENT	42
I. Introductory	42
II. Is the sale of all the Alice property justifi- able?	53
III. Has the Alice Gold & Silver Mng. Co. the power to hold stock of the Anaconda Copper Mng. Co.?	73
IV. The identity between the parties effecting the purchase and the parties accom- plishing the sale	83
V. The Federal Statute	106
SPECIFICATIONS OF ERROR	38
STATEMENT OF CASE	1
1. Sale of entire property of Alice.....	11
2. Sale of stock	13
3. Identity of control of Alice and Anaconda.	15
4. The Sherman Law	25

CASES CITED

	Page
<i>Addyston Pipe Co. v. U. S.</i> , 175 U. S., 211; 85 Fed., 271	125
<i>Allen v. Ajax Mng. Co.</i> , 30 Mont., 490.....	70
7 <i>Am. & Eng. Ency. of Law</i> (2d Ed.), 734.....	63
21 <i>Am. & Eng. Ency. of Law</i> (2d Ed.), 899.....	88
<i>Anthracite Coal Co. Case</i>	123
<i>Bathtub Trust Co.</i> , 226 U. S., 49.....	138
<i>Butler v. New Keystone Cop. Co.</i> , 93 Atl., 380-383.	55
<i>Bigelow v. Calumet & Hecla</i> , 155 Fed., 869.....	95
<i>S. C.</i> , 167 Fed., 704	95
<i>Cal. Bank v. Kennedy</i> , 167 U. S., 362.....	73
<i>Central T. Co. v. Pullman's P. C. Co.</i> , 134 U. S., 24.	114
<i>Chattanooga Foundry Co. v. Atlantic</i> , 203 U. S., 390	125
77 <i>Chicago v. Hackett</i> , 228 U. S., 559.....	71
3 <i>Clark & Marshall</i> , 631	69
4 <i>Clark & Marshall</i> , 335	76
<i>Comp. Laws of Utah</i> , 1876, page 232.....	68
<i>Sec. 23, Art. VI, Const. Utah</i>	71
<i>Cont. Wall Paper Co. v. Voight & Sons</i> , 212 U. S., 227, 143 Fed., 939	125
4 <i>Cook on Corp.</i> , <i>Sec. 897</i> , pp. 3293, 3298.....	76
X <i>Cyc.</i> , 791	88
X <i>Cyc.</i> , 990, 992	115
<i>DeKoven v. L. S. & M. S. Ry. Co.</i> , 216 Fed., 955-957	108
<i>Elyton Land Co. v. Dowdell</i> , 20 So., 981.....	74
<i>Frank v. U. P. R. R. Co. v. St. Jos. & G. I. Ry. Co.</i> , 226 Fed., 906	108
<i>Forrester v. B. & M. Co.</i> , 21 Mont., 544.....	53

	Page
<i>Forrester v. B. & M. Co.</i> , 21 Mont., 562-563.....	66
<i>Forsyth v. Hammond</i> , 166 U. S., 506.....	71
<i>Garey v. St. Joe Mng. Co.</i> , 91 Pac., 369.....	69
1 <i>Greenleaf on Ev.</i> , Sec. 333	91
<i>Helliwell on Stock</i> , 378	76
<i>Hyams v. Calumet & Hecla</i> , 221 Fed., 513-541.....	95
<i>Hyams v. Calumet & Hecla</i> , 221 Fed., 542.....	96
<i>Idaho-Oregon L. & P. Co. v. State Bank</i> , 224 Fed., 39	85
<i>International Harv. Co. v. Mo.</i> , 234 U. S., 199....	109-128
<i>In re McAusland</i> , 235 Fed., 173, 189-190.....	59
<i>Keans v. Johnson</i> , 9 N. J. Eq., 401.....	63
<i>La. v. Pillsbury</i> , 105 U. S., 278-294	71
<i>Lang v. Reservation M. & S. Co.</i> , 93 Pac., 208....	60
<i>Lee v. Atlantic</i> , 150 Fed., 787.....	76
<i>Long v. G. P. Ry. Co.</i> , 24 Am St., 931.....	114
<i>MacGinniss v. B. & M. Mng. Co.</i> , 29 Mont., 459..	73
<i>MacGinniss v. B. & M. Mng. Co.</i> , 29 Mont., 428-452	109
<i>Martinett v. Maczkewez</i> , 35 Atl., 662.....	49
<i>Mason v. Pewabic Mng. Co.</i> , 133 U. S., 53.....	42-44
<i>Mason v. Pewabic Mng. Co.</i> , 145 U. S., 349-361..	44
<i>Mason v. Pewabic Mng. Co.</i> , 145 U. S., 356.....	45
<i>Montague v. Lowrey</i> , 193 U. S., 38.....	125
<i>Morris v. Elyton</i> , 125 Ala., 263	68
<i>Munson v. Syracuse</i> , 103 N. Y., 58.....	83
<i>Noyes on Intercorp. Relations</i> , Secs. 114, 281.....	53
<i>Noyes on Intercorp. Relations</i> , Sec. 112.....	55
<i>Noyes on Intercorp. Relations</i> , Sec. 118.....	59
<i>Noyes on Intercorp. Relations</i> , Sec. 279.....	76
<i>Noyes on Intercorp. Relations</i> , Sec. 114.....	90
<i>O'Halloran v. Am. S. G. S. Co.</i> , 207 Fed., 187....	134
<i>Paine Lbr. Co. v. Neal</i> , 244 U. S., 459.....	108
<i>III Pomeroy's Equity</i> , 1093 (2d Ed.).....	115
<i>Rickards & Co. v. Bemis & Co.</i> , 78 S. W., 239.....	50

	Page
<i>Wm. B. Riker & Son Co. v. U. D. Co.</i> , 82 Atl., 930	76
<i>San Diego v. San Diego</i> , 44 Cal., 106.....	90
<i>Sausalito Bay L. Co. v. Sausalito Im. Co.</i> , 136 Pac.	
57-59	85
Sec. 5051, <i>Civil Code Montana</i>	119
<i>Secley v. Ass'n</i> , 75 Pac., 367.....	78
<i>Smith v. Flathead River Coal Co.</i> , 119 Pac., 858..	61
<i>Somerville v. St. Louis</i> , 46 Mont., 268.....	68-79
<i>Standard Oil Co. v. U. S.</i> , 226 U. S., 161.....	135
<i>Street Ry. Co. v. Walsh</i> , 94 S. W., 860.....	50
<i>Summers v. Glenwood</i> , 86 N. W., 749.....	86
<i>Swift & Co. v. U. S.</i> , 196 U. S., 375.....	125
<i>Tanner v. Lindell Ry. Co.</i> , 103 Am. St., 548.....	59
<i>Thomas v. Brownville</i> , 2 Fed., 877.....	86
<i>II Thompson on Corp.</i> , Sec. 1242.....	88
<i>III Thompson on Corp.</i> , 2421.....	53
<i>IV Thompson on Corp.</i> (2d Ed.), 4613.....	46
<i>VII Thompson on Corp.</i> , 8356.....	53
<i>Traer v. Lucas Prospecting Co.</i> , 99 N. W., 290....	60
<i>Treadwell v. Mfg. Co.</i> , 7 Gray, 393.....	54
<i>U. S. v. Am. Can Co.</i> , 220 Fed., 859-901.....	131
<i>U. S. v. Eastman Kodak Co.</i> , 226 Fed., 62.....	131
<i>U. S. v. Int. Harv. Co.</i> , 214 Fed., 987-1002.....	125
<i>U. S. v. Reading Co.</i> , 226 Fed., 229, 271-272.....	122
<i>U. S. v. Reading Co.</i> , 226 U. S., 324, 370.....	139
<i>U. S. v. Union Pac.</i> , 226 U. S., 86.....	107
<i>U. S. v. Union Pac.</i> , 226 U. S., 61.....	133
<i>U. S. v. U. S. Steel Corp.</i> , 223 Fed., 178.....	131
<i>Wilder Mfg. Co. v. Corn Products Rfg. Co.</i> , 236	
U. S., 165	111
<i>Wis., etc., v. Green, etc.</i> , 109 Am. St., 381-395....	115

Supreme Court of the United States

October Term, 1918.

No. 333.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, MARGARET ANN MEEHAN, EUGENE BLUM, ISAAC BLUM, EDWARD BLUM, ISADOR BAER, ALPHONS DREYFOOS; and ALPHONS DREYFOOS, EUGENE BLUM, DAVID C. GOLDENBERG and EUGENE BASCHO, Co-partners doing business under the firm name and style of DREYFOOS, BLUM & COMPANY; LEOPOLD FREUND and ALICE FREY,

Appellants,

v.

ANACONDA COPPER MINING COMPANY, a Corporation, ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and JOHN D. RYAN, J. W. ALLEN, W. D. THORNTON, A. C. CARSON, and E. S. FERRY,

Appellees.

BRIEF OF APPELLANTS.

I. STATEMENT OF THE CASE.

This suit was brought by certain stockholders of the appellee, Alice Gold and Silver Mining Company, to procure a decree annulling a deed of all of its property to the appellee Anaconda Copper Mining Company, made in consideration of the transfer by the latter of 30,000 shares of its capital stock to the first-named company. The appellants,

being the dissenting stockholders, insist that the sale which the deed witnesses should be held void:

(1.) Because neither the board of directors nor a majority of the stockholders of the Alice Company were authorized to sell or dispose of all of its property against the protest of any of its stockholders.

(2.) Because the Alice Gold and Silver Mining Company has no authority to acquire the stock of another corporation, and particularly there is no power or authority in any one, against the protest of any of the stockholders, to transform it from a mining corporation, such as the law and its incorporators made it, to a stockholding corporation.

(3.) Because there is substantial identity between the parties who negotiated and carried out the sale and the parties who negotiated and carried out the purchase; in other words, that the business of the Anaconda Copper Mining Company and the Alice Gold and Silver Mining Company were both controlled by a group represented by John D. Ryan, who is a director of both companies and the president of the Alice Company, and the consideration is inadequate.

(4.) Because the purchase was made in the pursuit of the purpose with which the Amalgamated Copper Company, now succeeded by the Anaconda Company, was organized, namely, to monopolize the production of copper in the Butte camp and the sale of the same in the markets of the world, in violation of the Sherman Anti-trust Act.

The Alice Gold and Silver Mining Company was organized under the laws of the Territory of Utah in the year 1880, its articles defining the powers it was to enjoy as follows:

"The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, mill sites, furnaces and reduction and refining works; to buy, sell and exchange mineral ores and bullion; to buy, lease, construct and operate roads, tramways, and freight and transportation routes, to facilitate the business of the company; to appropriate, buy and sell water, water rights and ways for conducting the same, and generally to do all kinds of business incident to, connected with, or convenient for the management of a general mining business, in the Territories of Utah, Montana, Idaho, and in any State or Territory of the United States."

Record, Vol. I, page 3.

The merits of the controversy became the subject of inquiry in this suit first before Judge William H. Hunt, upon an application for an injunction to restrain the Alice from disposing of the stock delivered to it by the Anaconda, that it might be available should a decree be made requiring its restoration as a condition of vacating the transfer. Oral testimony was produced, much of which, being reduced, was read by stipulation at the final hearing. The learned judge filed an opinion reviewing the transaction and holding that the relations between the apparent buyer and the apparent seller were so intimate as to cast upon the former the burden of proving good faith, fair dealing, and an adequate price.

Record, Vol. I, pages 166-177.

The injunction was granted.

The final hearing occurred before Judge George M. Bourquin, who likewise considered that owing to the identity of control in both corporations the Anaconda was required to make out a case requiring that the sale be affirmed and that it had not done so; in other words, that the presumption of fraud arising from the circumstances of the trans-

action and the relations of the parties to it had not been overcome. In his opinion, he said:

"The Court finds that the price paid for the Alice property was substantially inadequate, and because thereof, of the methods of sale, of the nature of the consideration and its intended disposition, and of the dissent of Alice minority stockholders (plaintiffs), the court concludes that plaintiffs are entitled to relief."

Record, Vol. I, page 180.

He held, likewise, that under the circumstances disclosed, the Alice could not become the owner of the Anaconda stock which was to be the consideration for the transfer, the charter of the first named company giving it no authority to acquire property of that character, and there being no conditions taking the case out of the operation of the general rule that a corporation, unless authorized by its charter and the law of the sovereignty creating it, can not acquire or hold stock of another corporation.

The Court did not, however, grant the relief asked, an annulment of the sale, but directed instead that the property should be put up at public auction; that if at such sale it did not bring more than the value of the stock given by the Anaconda for it, found to be \$1,500,000, the sale should stand, and that dissenting stockholders should have their proportionate share of that amount of money if they elected to take it for their stock in the Alice; if more should be offered for the property, the sale attacked should be set aside and the property awarded to the successful bidder.

Record, Vol. I, pages 178-189.

There were no bidders at the auction sale and the transfer to the Anaconda was by the final decree affirmed.

Record, Vol. I, pages 152-153.

From that decree an appeal was taken to the Circuit Court of Appeals for the Ninth Circuit.

Record, Vol. I, page 225.

To avoid any question as to the right of the court to review the proceedings resulting in the decree directing that the property be offered for sale at public auction, conceived by appellants to be interlocutory in character, an appeal was taken from it as well.

Record, Vol. I, page 210.

The decrees entered below were affirmed by the Court of Appeals, Judges Gilbert and Wolverton voting for affirmance (Rec., Vol. II, pp. 989-990), and Judge Ross insisting upon a judgment reversing the action of the District Court and directing the entry of a decree annulling the sale. (Rec., Vol. II, pp. 991-1010.)

The record made in the Circuit Court of Appeals is peculiar. The majority members file what may be denominated a memorandum opinion, beginning, "We concur in the opinion of Judge Ross, except in his conclusion that the sale to the Anaconda Company should be annulled." The opinion of Judge Ross bears all the earmarks of a majority opinion. It reviews at length the complicated facts of the case and canvasses severally the various grounds urged against the validity of the sale.

From the judgment of the intermediate tribunal, an appeal was prosecuted to this Court.

Record, Vol. II, ^{pages} 1012-1017.

It will be noticed from a perusal of the opinions filed in the District Court that neither judge before whom the cause came there felt it necessary to go farther in detail than the third ground upon which the sale is challenged. Neither pursued at any length the inquiry suggested by

either the first, second or fourth ground of challenge, though Judge Bourquin intimated that in his view the last is not open to a private litigant, and he reached the conclusion that the Alice could not become the owner of Anaconda stock.

Record, Vol. I, page 186.

Judge Ross held that the appellants could not invoke successfully the Sherman anti-trust act, that the Government alone could complain of its violation. (Rec., Vol. II, pp. 991-994); he held that under the conditions disclosed a sale of all the property of the Alice was authorized and justifiable (Rec., Vol. II, pp. 994-1000); he did not pass on the question of whether the Alice company could become the owner of Anaconda stock, saying:

"In the instant case the sale was made in exchange for stock in another corporation, with the intention by the board of directors of the Alice company, as is claimed on behalf of the appellees, to thereafter apportion the stock so acquired among the stockholders of the company, or its cash value to such of them as preferred cash, and thereafter to wind up its business and disincorporate the company.

"The appellees dispute both the validity of the exchange and the intent with which it was made, but we find it unnecessary to decide either of those questions, because of the views we entertain regarding the two remaining points presented by the record."

Record, Vol. II, page 1000.

He then expresses his concurrence in the view of the district court that by reason of the intimacy of relationship between the Alice and the Anaconda and the management of both corporations, the burden was cast upon the latter to show the adequacy of the consideration and that it had failed (Rec., Vol. II, pp. 1000-1006); and finally he held that the case of *Mason v. Pewabic Mining Co.*, 133 U. S.,

50, to which the district court had referred as authority for the decree, is inapplicable, and that it ought to be reversed. (Rec., Vol. II, pp. 1006-1010.)

It was quite unnecessary, as stated by Judge Ross, if the decree was to be reversed, as he advised, to determine whether the Alice could or could not lawfully hold Anaconda stock, but the majority agreeing with him in all other respects, and omitting altogether consideration of the question last above adverted to, apparently overlooking it entirely, held that the decree was authorized by *Mason v. Pewabic Mining Company*, in which the right of the selling company to hold the stock of the purchasing company was not an issue at all. Either it was empowered by the law of its creation to hold the stock of another company or its right to do so was not raised.

The action of the district court is even more incongruous, for after quite plainly announcing the view that, while under exceptional circumstances one corporation may, though it be not specifically authorized, hold stock of another corporation, the instant case was not brought within the exception to the general rule, so that the Alice did not lawfully become the owner of the Anaconda stock, yet the decree which was eventually entered confirmed the sale and thus adjudicated the Alice to be the owner of 30,000 shares of the capital stock of the Anaconda Company.

To understand the material conditions under which the sale to be investigated was made, it will be necessary to attend to the outlines of the history of the Amalgamated Copper Company, which, for a time, occupied a large place in the industrial life of Butte.

Prior to the year 1899 a number of independent companies were engaged in competition with each other in mining and smelting copper ore in the Butte camp and in the sale of the copper product in interstate commerce. Among

these were the Anaconda Copper Mining Company, then and still the greatest producer of copper in the world, the Washoe Copper Company, the Parrot Silver and Copper Mining Company, the Colorado Mining and Smelting Company, the Boston and Montana Consolidated Copper and Silver Mining Company, and the Butte and Boston Consolidated Mining Company.

The Amalgamated, on coming into existence in the year mentioned, acquired a majority of the stock of the Anaconda and of the Parrot and all of the stock of the Washoe and the Colorado. It soon secured 96,000 shares more of Anaconda and 10,000 of Boston and Montana, the second largest producer in the world, and by 1901 it had acquired all, or at least a majority, of the stock of that great company and of the Butte & Boston, increasing its capital stock to make these latter purchases from \$75,000,000 to \$155,000,000, when it was master of practically all producing companies in the Butte field except those dominated by F. Augustus Heinze and those owned by W. A. Clark.

Record, Vol. II, page 541.

At the time the Amalgamated was launched there was in progress between Heinze and his companies on the one side, and the Boston & Montana and the Butte & Boston on the other, bitter and protracted litigation, which, as soon as the last-named companies became allied with the Amalgamated, involved it and all its constituent companies. The war was waged for a number of years, vexing the social and political life of the State as well as keeping the courts busy. Numberless lawsuits were instituted and prosecuted, some of them reaching this court and many the Supreme Court of Montana and the Circuit Court of Appeals. Finally a settlement was effected, in the year 1905 or 1906, the negotiations being carried on between Heinze, for himself and his companies, and John D. Ryan,

the president of the Anaconda and a director of the Amalgamated. As a result of this settlement Heinze was paid \$10,500,000 and all or practically all of the properties with which he was associated in Butte were transferred to a corporation, organized to take them over, known as the Red Metals Mining Company. All of its stock, of the par value of \$11,000,000, was immediately acquired by another company organized to hold it, with a capital stock of \$15,000,000, called the Butte Coalition Company. Of the stock of this company the Amalgamated became the owner of 50,000 of the 1,000,000 shares. Its officers and leading spirits took stock in the new organization.

While the negotiations looking to the settlement of the Heinze-Amalgamated litigation were in progress, John D. Ryan, then a director of both the Amalgamated and the Anaconda and the president of the latter, procured an option on more than a majority of the stock of the Alice Company. It owned at that time, and had owned for many years, about 150 acres of mining ground in the Butte camp adjacent to properties belonging to companies subsidiary to or being constituents of the Amalgamated. Before the days when Butte became known as a distinctively copper camp, the Alice ground had been extensively worked for silver, but after the slump in that metal in the early nineties operations were carried on in a desultory manner and on a small scale in the upper levels, the lower workings being flooded. The returns were not sufficient to meet the expenses incurred on account of taxes and for the care of the property. The deficiency was met by the holders of the block of stock optioned to Ryan, the Walker Bros. of Salt Lake, Utah, Record, Vol. I, page 434,

the total obligations of the company when Ryan became interested in it amounting to about \$27,000. On the organization of the Butte Coalition he transferred to it his

option on the Alice stock and that company took it over, acquiring 234,215 shares at \$1.50 per share. Ryan thereupon became a director of the Alice, and at the time of the transfer here involved was its president .

Record, Vol. I, pages 391-400; Vol. II, page 618.

In the year 1909 those in control of the Amalgamated conceived it to be wise to have the title to all the properties of its constituent companies transferred to the Anaconda. Pursuant to this plan its capital stock was increased from 30,000 shares to 150,000. Propositions were solemnly made by the Anaconda to each of these and as solemnly accepted by a vote of the stockholders of the latter, to give a certain number of shares of Anaconda stock for all the property of the companies to be absorbed. Thus, in exchange for its stock, the Anaconda acquired the great properties of the Boston & Montana, the Butte & Boston, the Washoe, the Parrot, the Colorado, and the Red Metals, each of which companies, pursuant to the plan, were, by regular proceedings, dissolved. On the dissolution of the Red Metals its Anaconda stock went to the Butte Coalition. The plan either originally contemplated the acquisition of the properties of the Alice as a constituent company of the Amalgamated or it was enlarged to embrace that company as such. However, while the consolidation referred to was going on, the Alice directors, including Ryan, called a meeting of the stockholders to be held May 2, 1910, to consider ratifying and confirming a contract of sale of all the property and assets of that company to the Anaconda for 30,000 shares of its stock.

Record, Vol. II, pages 632, 633.

The ratification duly came from a meeting at which 289,590 shares of the stock were voted for it,

Record, Vol. I, page 342,

all but 3,700 shares being cast under proxies by E. S. Ferry, a member of the firm of Richards, Richards & Ferry, Salt Lake attorneys for the Alice Company. 100 shares standing in his name, but actually owned by the Butte Coalition, he voted in his own right; 2,200 shares were voted under "substitute proxy" by F. S. Richards, a member of the firm named, and 1,100 shares by Willard Hamer, a clerk in its office, and 300 shares by D. Gay Stivers, of the legal force of the Anaconda Company, who held a proxy. Of the total affirmative vote, 234,215 shares, as stated, were owned by the Butte Coalition, the stockholders of record being dummies.

Record, Vol. II, page 618.

Pursuant to this resolution, Ryan, as president of the Alice, being at the same time a director of the Amalgamated and the Anaconda, on May 31, 1910, executed the deed sought to be set aside herein, through which there was conveyed, in form, to the Anaconda all the property of the Alice.

The foregoing brief summary will now be supplemented with further references to the testimony bearing severally upon the propositions relied upon by the appellants.

(1.) *The Sale of the Entire Property of the Alice.*

Authority to dispose of all the property of the corporation notwithstanding the protest of minority stockholders is justified, first, under a statute of the State of Utah, enacted in 1905, and second, under the rule which authorizes majority stockholders to close out the business of an insolvent or failing corporation. Was the Alice such? The company paid dividends regularly from 1881 to 1898, inclusive, except for the years between 1891 and 1896.

Record, Vol. I, pages 380-381.

The properties of the company had been developed to a depth of 1,500 feet.

Record, Vol. II, page 936.

In the old days the ore, silver, was worked by the pan amalgamation process,

Record, Vol. I, page 377,

there being a mill on the premises.

Record, Vol. I, page 374.

After 1894, the property was worked chiefly by leasors or tributors, the water having been allowed to raise first to the 1,000 and afterwards to the 700 foot level. The mill was closed down in 1899.

Record, Vol. I, page 374.

The shaft-house burned down in 1902, and some new machinery was put upon the property to hoist the ore extracted by the tributors.

Record, Vol. I, page 374.

The expenditures in connection with the property were for insurance, taxes, and watching the property.

Record, Vol. I, page 376.

The deficiency was made up through the New York office of the Alice Company,

Record, Vol. I, page 373,

the debt being carried by the Butte Coalition Company, after it became interested March 31, 1906.

Record, Vol. I, page 447.

It amounted to \$27,784.75 at that time, but swelled in three years, nine months, under the new management, to \$34,101.56,

Record, Vol. I, pages 447-448,

including \$1,901.61 expenses of the eastern office, which, by the way, was on the same floor and adjacent to the offices of the Amalgamated, the Anaconda and the Butte Coalition in the city of New York. Of the aggregate indebtedness \$19,575.23 had been incurred in the construction of the new hoist after the destruction of the old one by the fire. More detailed information concerning the property will be set out in connection with the testimony on the subject of value. It is sufficient to say here that the Alice was known to contain large bodies of lead and zinc ores.

Record, Vol. I, pages 374-375.

The properties were adjacent to rich producing copper mines, the veins being worked in them passing, in the opinion of some of the witnesses, into the Alice ground. The stock given by the Anaconda for the assets of the former company was admitted to be worth \$1,200,000 and was claimed by appellees and found by the court to be worth \$1,500,000.

Record, Vol. I, page 145.

(2.) *The Sale ~~of~~ Stock.*

Conceding the right of the majority stockholders of the Alice to force a sale of all the property of the company, it is insisted by the appellants that such a sale, or exchange rather, could not be made for stock in another company, thus transforming the Alice from a mining company to a stockholding company. To this contention it is answered

that when a company is authorized to sell all its property in bulk it may, as a part of the process of liquidation, accept stock in payment, such stock to be converted into cash for distribution among the stockholders, and that the stock in question was accepted as a part of a plan of dissolution of the Alice.

The sale was authorized by a meeting of the stockholders of the Alice held pursuant to a notice which gave no intimation of a purpose to dissolve the corporation.

Record, Vol. II, pages 632-633.

It was accompanied by a letter from the directors which held out as an inducement that various corporations, to wit:

"The Boston and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company, Big Blackfoot Lumber Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company, Red Metals Mining Company, Diamond Coal & Coke Company, and Parrot Silver & Copper Company (all constituent companies of the Amalgamated), have taken steps to effect a consolidation of all the property owned by them, by a sale of their respective properties to the Anaconda Copper Mining Company, for certain amounts of the capital stock of the Anaconda Copper Mining Company."

Record, Vol. I, page 444.

The letter continued:

"By the consolidation above referred to the Anaconda Copper Mining Company has acquired the most important mining ground in the Butte District, and it is believed that it will be enabled, through the adoption of general systems of drainage, ventilation, and development, to prospect in an economical manner the undeveloped portion of the property thus acquired.

"This company is the owner of comparatively large areas of mining property which lie contiguous to some of the property belonging to the Anaconda Copper Mining Company, and which it is believed are of sufficient value to justify prospecting and development, provided the same can be carried on by a company strong enough financially to bear the burden of so doing."

Record, Vol. I, page 445.

"You are therefore advised that in the opinion of the management it would be to the best interests of this company and its shareholders to accept the proposition of the Anaconda Copper Mining Company."

Record, Vol. I, page 446.

Nearly a year thereafter a meeting of the stockholders was called to consider a proposition to dissolve the company.

Record, Vol. II, pages 674-675.

(3.) *Identity of Control of Alice and Anaconda.*

At the time of the purchase and since 1906 the Butte Coalition owned a majority of the stock of the Alice.

Record, Vol. I, page 376.

Every director of the latter was a dummy holding the stock that stood in his name for the Butte Coalition, as will appear by the list at page 446, modified by resignations and appointments recited at page 624 and the testimony of the secretary at pages 617-618.

With the notice of the meeting, blank proxies were sent out from the New York office of the Alice, which was also the office of the Butte Coalition, authorizing either one Thornton or Ferry, heretofore referred to, or *Mr. Kelley*,

who was the general counsel of the Anaconda Company at Butte, to vote the shares of the stockholders.

Record, Vol. II, pages 618-619.

Kelley did not attend the meeting, but D. Gay Stivers, another of the attorneys of the Anaconda Company at Butte, did. He held a proxy for 300 shares and voted them for the resolution of ratification.

Record, Vol. I, page 338.

He was made secretary,

Record, Vol. I, page 322,

and a member of a committee to examine proxies.

Record, Vol. I, page 329.

No letter was sent to Mr. Ferry, who did most of the voting at the meeting, instructing him how to vote the proxies which in such generous numbers came into his hands.

Record, Vol. II, page 619.

Mr. Allen assumes that Ferry got directions either from Mr. Kelley or Mr. Thornton and believes that inasmuch as Stivers attended the meeting "it is very probable that instructions were carried by him."

It will be borne in mind that the Amalgamated owned 50,000 shares of Coalition stock and that the officers of the former became subscribers for its stock upon its organization; that it came into existence to hold the stock of the Red Metals, which was organized to take over the Heinze properties pursuant to the settlement. The furious contests between the owners of the two groups of properties ceased. The purchase disposed of the litigation.

Record, Vol. I, page 382.

All rights of action by any of the Heinze companies against any of the constituent companies of the Amalgamated were assigned to one T. F. Cole, a close business associate of John D. Ryan, who proposed to release them all, if the Amalgamated would procure to be released all claims which any of its constituent companies had against the Heinze companies or any of their officers.

Record, Vol. II, page 552.

This proposition was accepted and the slate wiped clean.

The suits were all dismissed and none ever after arose between the Amalgamated or any of its constituent companies and the Red Metals.

Record, Vol. I, page 370.

Indeed the attorneys for the Anaconda became the attorneys for the Red Metals (*Id.*), as well as for the Alice.

Record, Vol. I, pages 372, 372.

The superintendent or custodian of the Alice, after the Butte Coalition acquired its stock interest, got his orders from Mr. Gillie, whom he recognized as his superior officer.

Record, Vol. I, page 373.

Gillie had the direction of the mining operations of the Amalgamated companies in Butte.

Record, Vol. II, pages 932, 877.

He sometimes countersigned the checks of the Alice. Sometimes this was done by one Alley, whose office was entered through the general waiting room of the legal department of the Anaconda Company.

Record, Vol. I, page 373.

Value.—The property in question embraces practically a mile of the outcrop of the great Rainbow Ledge, made up of many associated veins. It is traceable by actual workings for miles on the surface, pursuing the course of an arc, from which fact it may have taken its name.

Record, Vol. II, page 724.

It is said by one of the witnesses, without contradiction, to be "by far the largest and most continuous outcrop" in the Butte district.

Record, Vol. II, page 725.

The workings in the Alice ground have been adverted to. Actual mining operations were being conducted on the extension of the Rainbow Lode to the east of the Alice ground in the Poser and the Elm Orlu, owned by Senator Clark, and in the Black Rock, owned by the Butte Superior Company (*Id.*). From both of the former a very considerable tonnage of copper ore has been shipped.

Record, Vol. I, page 395.

and they have both been heavy producers of zinc ore (*Id.*). In the early part of the year 1910, the operations being carried on by the Butte Superior on the Black Rock had reached a stage at which financial success was assured.

Record, Vol. II, page 733.

These claims, and particularly the Black Rock, had been worked for many years for silver, as had the Alice.

Record, Vol. II, page 739.

The zinc ores are now being profitably reduced after much experimentation and the development of new processes.

Record, Vol. II, page 839.

These made such ores a commercial product in the Butte Camp for the first time in 1910.

Record, Vol. II, page 786.

The works of the Butte Superior are capable of treating 1,000 tons daily.

Record, Vol. II, page 811.

The Alice is known to contain such ores in great abundance. Very considerable bodies were encountered in the operations conducted therein,

Record, Vol. II, page 898,

but they were left undisturbed because the presence of zinc interfered with the successful treatment of silver ores by the processes in vogue in the old days.

Record, Vol. II, pages 890, 832-833.

Samples of these ores taken from above the 600-foot level,

Record, Vol. II, page 888,

showed a very small percentage of copper.

Record, Vol. II, pages 906-907.

In veins intersecting the Rainbow within the Alice ground pursuing a northwesterly-southeasterly direction, hereafter to be referred to, great copper producers, ore in commercial quantities is rarely found above the 1,000-foot level. In the opinion of an expert examined by appellants copper bodies will be found in the Alice.

Record, Vol. II, pages 731, 749.

The history of the Butte district shows that veins worked for silver near the surface became copper producers with depth,

Record, Vol. II, pages 732, 757,

the theory being that the copper has leached out down to the point where the oxidization ceased.

Record, Vol. II, page 757.

Another expert examined by the appellants, of wide experience and renown, Walter Harvey Weed, testified that copper ore would be found in the Alice ground and in the Rainbow Lode. He had been engaged at some work about Clark's Elm Orlu and had seen as much as 150 tons per day of high-grade copper ore taken from that claim and from the Rainbow Lode.

Record, Vol. II, page 800.

He had learned from old statements concerning the Alice that copper was found in the lead-silver ores, a feature that was embarrassing in the smelting operations, to the amount of 1.1 to 2 per cent, giving them a value for the copper content under modern processes.

Record, Vol. II, pages 800-801.

"Finding copper ores of value in the Rainbow Lode," is, in his opinion "a geological probability."

Record, Vol. II, page 811.

But he would first conduct explorations to find copper in the veins which enter the property from the southeast.

Record, Vol. II, page 802.

Two of these known as the Jessie Vein and the Edith May Vein, have been extensively worked for a long distance to the southeast and to great depths, over 3,000 feet. The former is being worked very extensively and profitably in the Badger State claim, an Anaconda property, shown on the map to be in close proximity to the Alice ground,

Record, Vol. II, page 729,

and a shaft has been sunk on the Moose, another Anaconda property, a small fraction contiguous to the property in question here, probably on one or the other of the veins above named.

Record, Vol. II, pages 730, 815.

The Badger State is one of the greatest producers in Butte, yielding more than 10,000,000 pounds of copper in 1913.

Record, Vol. I, page 441.

This great mine developed within 500 feet of the Alice ground, was opened up during the period between the acquisition of the Alice stock by the Butte Coalition under the Ryan option and the time when the transfer in controversy was effected. In the report of the Boston & Montana Company for 1909 occurs the following:

"This shaft (the Badger State shaft) had, on December 31st, 1909, reached a depth of 1,548 feet, and has been sunk in the northwestern portion of the Butte Camp, in order to develop the Badger State and Auraria claims owned by this company. The ore bodies have no connection whatsoever with those that have been developed by the shafts already mentioned, but the work thus far done, gives promise of very gratifying results."

Record, Vol. II, pages 575-576.

The bright promise it held out continued undimmed for, in a later report, either for the year ending April 30, 1910, or April 30, 1911, it was said:

"This shaft is situated in an entirely different section of the Butte Camp from that in which are located the shafts which have been reported under the heading of the Boston and Montana Department; as it lies in a northwesterly direction from them, and distant

several thousand feet. It is now eighteen hundred feet in depth, two hundred and eighty-three feet having been sunk during the year. Stations have been established at the thirteen hundred, sixteen hundred and eighteen hundred foot levels, and several veins of great promise have been developed, showing good widths, and a grade of ore higher in copper values, and carrying an average silver value, greater than that of any of the other mines. *There is a general opinion among those familiar with this property and its development, that it is destined to become one of the great mines of the district. Development work is being pushed with vigor.*"

Record, Vol. II, page 577.

"The Jessie vein is open to probably within 500 feet of the Alice ground and the Edith May much closer than that," according to the testimony of Reno Sales, geologist for the Anaconda Company.

Record, Vol. II, page 925.

It is cut in the Badger State claim on the 200 level and on the 1,000 level.

Record, Vol. II, page 929.

The report for 1912 shows that the greatest values in that claim were encountered on the 1,600 and 1,800 levels.

Record, Vol. II, page 578.

They were still going down. Development progressed with very gratifying results, the average daily output for the year being 550 tons.

Record, Vol. II, page 579.

In the same report the shaft in the Moose, still west of the Badger State and contiguous to the Alice property, was the subject of the following mention:

"Many years ago, the ground adjacent to the Moose shaft, lying in a westerly direction from the Badger State mine, was worked to a depth of five hundred feet with fair success for ores, carrying silver values only. During the year 1913, it is proposed to start sinking the Moose shaft to a depth of eighteen hundred feet, and to prospect the veins at greater depth. This shaft can also eventually be connected with the Badger State workings, and will be of great assistance in perfecting ventilation."

Record, Vol. II, pages 579-580.

There has been a very material expansion of the copper producing area of the Butte district and in the direction of the Alice ground in more recent years.

Record, Vol. II, page 792.

Some evidence was introduced on behalf of the appellees to show that the zinc ores of the Alice are refractory in character and the metallurgist of the Butte and Superior Company, a gentleman to whom much of the success of that company is due, testified, as a result of tests made by him, that ores such as samples provided him, from the upper levels of the Alice, could not, in his opinion, be worked at a profit,

Record, Vol. II, page 868,

but he admitted that his company struggled along for six years before he came to it in an effort to perfect its methods of treating the Butte Superior ores, without making a success, and that most satisfactory results had since been obtained because of the improvements in the system of treatment of the ores.

Record, Vol. II, page 873.

He thought it possible that at some future time the Alice ores could be treated successfully.

Record, Vol. II, page 873.

Dr. Weed, however, expressed himself as of the belief that the zinc ores of the Alice mine can be successfully worked by existing processes.

Record, Vol. II, pages 789-823.

An attempt was made at one time to treat these zinc ores of the Alice, with what skill or command of metallurgical science does not appear, but the plant burned down and the effort was abandoned.

Record, Vol. I, page 418.

Since the Anaconda acquired the property it provided two different zinc companies with samples of the ores for experimentation, but they both reported unfavorably and efforts to induce "practical zinc people," Mr. Ryan testified, to take a lease of the property had failed.

Record, Vol. I, page 420.

The Anaconda itself never did any experimentation.

Record, Vol. I, page 398.

The reports from the two companies said to have reported were not offered, nor were the terms upon which lessors were invited to take hold of the property disclosed.

No opinion was ventured by any witness for the appellees as to the value of the property, though the president of the Anaconda, its superintendent of mines and its geologist testified.

As a step in the consolidation through which the title to all the properties was united in the Anaconda, three experts were sent out to examine them. They made a report, which presumably embraced the Alice and must have placed either an absolute or a relative value upon the properties of the companies respectively.

Record, Vol. I, page 408.

The report was not produced, though called for, nor was any one of the three called upon to testify.

Dr. Weed and the other expert called by the appellants on the subject of value, Mr. Corry, both testified that the properties of the Alice at the time of the sale were worth \$3,000,000, the latter fixing the value at 3 1-4 millions.

Record, Vol. II, pages 791-734.

Both say, however, that in view of conditions they would have advised against selling at that time, for various reasons, among others, that development of great importance was going on in adjacent properties, the producing area was being gradually extended in the direction of the Alice properties, mining methods were being improved and cost of extraction and reduction being reduced and metallurgical processes and particularly those for the treatment of zinc ores being discovered and developed.

Record, Vol. II, page 791.

(4.) *The Sherman Law.*

The Amalgamated Copper Company acquired on its organization with a capital stock, speedily raised to \$75,000,000, the majority of the stock of the Anaconda, the greatest copper company in the world, a majority of the Parrot, and all of the Washoe and the Colorado.

These were all highly prosperous companies, engaged in mining and smelting copper ores and in shipping the product to the ends of the earth, where it was sold through some commission house. It acquired as well all the stock of the Diamond Coal and Coke Company,

Record, Vol. I, page 409,

supplying coal to the mines and smelters, all of the stock of the Big Blackfoot Milling Company, providing

timber for them, and the stock of the Hennessy Mercantile Company, operating a great department store in trade with the miners. It took in quite an additional bunch of companies subsidiary to the Anaconda engaged in various mercantile lines and profitable because of the operations of that company, for all of which it paid the \$75,000,000, the purchase being authorized at a meeting held April 27, 1899, one William S. Bogert lumping off the whole collection at that figure to the new organization.

Record, Vol. II, pages 491-492.

On September 21, 1899, it acquired 42,000 shares more of Anaconda,

Record, Vol. II, page 546,

and on December 21 the purchase of 54,000 more shares of Anaconda was authorized and 10,000 shares of Boston & Montana, next to the Anaconda in point of production among the copper companies of the world.

Record, Vol. II, page 509.

Where the money came from to make these later purchases is not disclosed, the ledger of the company—No. 1, covering the period from 1899 to 1905—having in some unaccountable manner disappeared.

Record, Vol. II, page 510.

The recital above, sustained by repeated declarations emanating from the Amalgamated, that all of the Colorado stock was acquired, is not altogether accurate, for it appears that as one of the last acts of a meeting held May 22, 1899, the treasurer was authorized to purchase 17,354 shares of Colorado "not already acquired" for a trifle of a half of a million or so,

Record, Vol II, page 501,

from which we gather that all the stock mentioned at pages 485 and 486 above referred to, or at least the Colorado stock, had been acquired. However, at the April 27th meeting, the National City Bank was authorized to receive subscriptions for the entire issue of the capital stock except ten shares,

Record, Vol. II, page 498,

whereupon it forthwith put out a notice to the effect that the company had "already purchased large interests in Anaconda, Parrot, Washoe, and Colorado," and asked for subscriptions to the entire issue of the capital stock of the company.

Record, Vol. II, page 707.

Just how it had acquired these large interests before it had a dollar and was prepared to say, simultaneously with its request for subscriptions for all its stock, that it had already secured such interests, it is perhaps unnecessary to inquire.

But it started off master of more productive copper properties than were ever before brought under one control.

In 1901 it acquired the great properties of the Boston & Montana and the Butte & Boston, by the purchase nominally from Kidder, Peabody & Company of more than a majority of the stock of those companies,

Record, Vol. II, page 521,

increasing its capital stock to take them in to \$155,000,000,

Record, Vol. II, page 541,

when it had practically all there was in Butte save the Heinze and Clark properties. The former it in effect acquired, in manner hereinbefore set out, on the settlement of the litigation in 1906, paying \$10,500,000, and eventually by transfer to the Anaconda, and the latter in 1910 by pur-

chase for \$5,000,000 more. At the time the depositions were taken its investments totaled \$184,000,000 odd.

Record, Vol. II, page 550.

In 1899, when the Amalgamated came into existence, the Butte camp was producing nearly half of the copper output of the United States, 238,000,000 pounds approximately, out of a total of 581,000,000.

Record, Vol. I, pages 291, 290.

1. The annual production of its constituent companies at that time was as follows: Anaconda, 120,000,000; Boston-Montana, 63,000,000; Butte and Boston, 12,000,000; Colorado Smelter 10,000,000; Parrot, 15,000,000; total 220,000,000.

Record, Vol. II, page 713.

In 1910, the total production in the United States was 1,086,115,430 pounds, of which Montana contributed 288,449,425.

Record, Vol. I, page 291.

In 1911 other producers in Butte put out not to exceed 42½ million pounds,

Record, Vol. I, page 292.

less than 15 per cent of the total production. 30,000,000 pounds of the 42 1-2 millions were produced by the North Butte Company, organized by Ryan and Cole. On its organization H. H. Rogers, president of the Amalgamated, subscribed for \$100,000 of the stock.

Record, Vol. I, pages 403-404-405.

In view of the statement of Ryan in the course of the testimony just referred to, it would seem that he is misquoted

at page 385, where he is represented as saying that he had nothing to do with the organization of the North Butte.

The reports of the Amalgamated tell of harassing apex suits in Butte, but it never had any serious trouble with the North Butte.

Record, Vol. I, page 390.

The story of the acquisition of the Heinze properties has been told in sufficient detail. The Clark properties, like those of the Alice, were acquired while the consolidation was going on which vested the title to all of them in the Anaconda. The actual transfer was made June 1, 1910, though the purchase occurred a few months before that date.

Record, Vol. I, page 405.

This purchase was made while there was pending a controversy between Clark and the Amalgamated such as to call for the activities of engineers and lawyers in connection with it.

Record, Vol. I, pages 390-391.

An attempt is made to justify the consolidation of 1910 on the basis of economy and for the purpose of eliminating apex controversies among the subsidiaries.

Record, Vol. I, pages 310-315.

No explanation whatever is offered for the consolidation brought about by the organization of the Amalgamated.

As to the apex controversies, they seemed to have been adjusted without difficulty and the constituent companies never got into court because of them.

One of the appellants testified to a conversation with Mr. Kelley, general counsel for the Anaconda Company, in which the latter said, apparently apropos of the consolida-

tion then going on, that the Federal Government is opposed to holding companies.

Record, Vol. II, page 691.

Though Mr. Kelley was examined as a witness he made no reference to this testimony.

When the Amalgamated got control of the stock of these companies, respectively, it dismantled the smelters at Butte, that of the Parrot in 1899, of the Butte & Boston in 1901 or 1902, and of the Colorado in 1905.

Record, Vol. I, page 289.

Similarly the Montana Ore Purchasing Company smelter, a Heinze plant, went out of commission when the famous litigation was settled and the properties with which he was associated passed to the Red Metals. And so the Butte Reduction Works, otherwise known as the Clark smelter, when his copper properties went to the Amalgamated. No copper smelters are left in Montana save the two owned by the Anaconda, one at the city of Anaconda and the other at Great Falls, and one at Butte owned by the Pittsmont Company.

Record, Vol. I, page 289.

The story of the purpose with which the Amalgamated was organized is told by Thomas W. Lawson, a witness examined for the appellants, as follows:

"In the work of organizing that company, I was associated with the late Henry H. Rogers and Albert C. Burrage. The company was organized in the month of April, 1899; I should say from memory that I had been conferring and negotiating with those gentlemen and others for three years before that time. Upon the organization of that company, there was turned over to it a controlling interest in a number of mining corporations; the stocks of

which were acquired from the promoters of the company. I had a part in the purchase of some of the stocks, which were thus eventually transferred to the company on its organization. The particular companies whose stocks we were actively engaged in securing immediately prior to the organization of the Amalgamated, I should say were the Anaconda, Boston & Montana, Butte & Boston, and the Parrot. Speaking generally, our plan was this: We intended to purchase the controlling interest in certain producing copper mining companies, those I have particularly named and others. I distinguish between the two because we did purchase some and abandoned the purchase of others, the purchase of which was contemplated at the beginning. Our intention was to put them into a consolidation, amalgamation—into some larger holding corporation to be organized later, for the purpose of more advantageously and profitably conducting the copper business; conducted separately at that time by the different companies we were to absorb, or hoped to absorb. Other companies we intended to absorb were the Calumet & Hecla, and Osceola, and some properties of which I cannot recall the names, controlled or owned by Senator Clark at Butte; and some other copper companies in the Lake Region; also the Arcadia and Isle Royale. The advertisement in the Boston Herald of May 8th, 1899, over my signature contained the following statement:

"The Amalgamated Copper Company is the company into which is to be merged all sound producing copper companies that are now paying and after close investigation prove good and will pay in the future over 8 per cent on the par value of the stock which the Amalgamated Company issues."

"It accurately states the purpose as it was developed in the course of my negotiations with my associates. I do not believe we intended at that time to purchase the United Verde. If we could have purchased, we would have been very glad to get it, but we feared at that time we would not be able to purchase the property from Senator Clark. Generally

speaking the plan contemplated the acquisition of all producing copper mines in this country, which we might be able to purchase upon any reasonable terms. We intended to purchase all of the stock of each company, in which we could purchase a controlling interest, if it were possible and feasible. I think we also talked of acquiring the Rio Tinto. In the article which appeared in 'Everybody's' for the month of October, 1914, written by me, there appears the following statement:

"In 1896 I formulated and perfected the plans for "Coppers," a broad and comprehensive project having for its basis the buying and consolidating of all the best producing copper properties in Europe and America, and educating the world to their great merits as safe and profitable investments'; which states succinctly the plan which I had in mind. A fair statement of our purpose appears in the New York "Sun" of April 28, 1899, in the article headed "Here's the Copper Pool," as follows:

"The copper combination materialized yesterday. The new company will combine nine copper mining companies. Its purpose will be so far as possible to give stability to the copper market. It is not proposed to advance prices but rather to prevent an undue advance, as by keeping the prices upon a fair basis it is believed that the demand for the metal will be fostered and the profits of the company be all the greater. Economies in the business will be instituted."

Record, Vol. II, pages 700-702.

In the year 1911 the Amalgamated acquired all of the stock of the United Metals Selling Company, since its organization the greatest copper selling agency in the world. It sold for the Amalgamated.

Record, Vol. I, pages 408-409.

Mr. Lawson tells of its coming into being thus:

"I know about the United Metals Selling Company. It was organized about the same time or

shortly after. The principal business was the old copper selling agency business of the Lewisohns. Their business was taken over, I think, as a whole and it was made the basis of the new selling agency. This company had contracts with a number of the larger producing copper mining companies, contracts to sell their metal for them—finance them during the selling of it, give them credits, and in a general way what is known as the copper selling agents business, charging a commission for the work done. I think the Amalgamated Copper Company became the owner of some stock—the controlling interest—in the United Metals Selling Company. Subsequently I think it acquired all of it. The organization of the United Metals Selling Company was in contemplation at the time of the organization of the Amalgamated Copper Company, as a part of a general scheme to market the copper to a finality. My article in 'Everybody's' heretofore referred to, states the case, the conditions, about as they were as follows:

"On the board of directors, too, was Governor Flower of the financial and brokerage house of Flower & Company, who had acted as fiscal agents for the corporation at its formation, nor must I forget the Lewisohn Brothers, who had been induced to turn in all their copper business at actual cost to be incorporated in the United Metals Selling Company, a part of the Amalgamated scheme, but not included in the corporation, and every one of these had elaborate assurance that he was in on the cellar floor."

"As regards the reason for acquiring the selling agency, I will say that in the carrying out of our general scheme, the general scheme which was contemplated all the way through, it would have been very essential to have the marketing of the whole product of the different mines controlled or owned by the consolidated company, as the very foundation idea of the whole scheme was the control of the price of the metal, control to an extent that we could keep the price from the wild fluctuations that had been the history of copper metals from the beginning. In other words, a control that would have enabled us to establish a fair

price and to hold that fair price through the ups and downs of general business, through the periods when the metal would be in strong demand, when the demand would let up, and there would be accumulation or overproduction, a temporary overproduction, and the very essential of that would be a control in the sense which I stated, of the selling, of the getting the metal to the consumer."

Record, Vol. II, pages 702-704.

The delay about taking over the stocks of the Boston & Montana and the Butte & Boston, Mr. Lawson explains in the following testimony:

"The original acquisition of its assets by the Amalgamated did not include any of the stock of the Butte and Boston or the Boston-Montana, but we had, prior to its organization, secured a considerable amount of the stocks of these companies for the people who were organizing the Amalgamated. At that time in Montana, the management of the Butte and Boston and Boston-Montana was harmonious with the management of the Amalgamated. The reason that the Amalgamated did not acquire immediately upon its organization the stocks of these two companies was that in the beginning and up to within a comparatively short time of the organization of the Amalgamated company, we had intended to have the Boston and Montana, and Butte and Boston stocks the first stocks to be absorbed, but in the meantime Mr. Rogers had been able to acquire from Mr. Marcus Daly the control of the Anaconda property, which had not been originally contemplated, or the control of which had not been originally contemplated, until after the Boston-Montana and Butte and Boston had been arranged for; and that would necessitate a larger amount of capital at the start, than Mr. Rogers and Mr. Rockefeller and some of our associates thought was advisable, so in a general way it was decided to bring the contemplated Amalgamated property to the public in sections, and what was to have

been the first section was shifted to the second, so that in the first section could be included this large amount of Anaconda. They had secured a control of the Butte property. They had not purchased the control of the Boston-Montana, but could speak for the control of it—options in some cases, and friendly relations with the larger holders in others.”

Record, Vol. II, pages 704-705.

The leading spirit or master mind in effecting the consolidation was Henry H. Rogers.

Record, Vol. II, page 704.

On perfecting the plans to bring out the Amalgamated, Lawson, on the suggestion of Rogers, and two other associates, wrote out and caused to be inserted in the “New York Sun” and the “Boston Herald” an advertisement signed by Marcus Daly, H. H. Rogers, and Wm. G. Rockefeller, inviting subscriptions to the stock of the Amalgamated. The attention of the witness was called to the following from Moody’s “The Truth About the Trusts:”

“While the result turned out far otherwise, in the original plan both judgment and sanity prevailed, for it was purposed not merely to form a combination of a few of the larger producers embracing a copper production of only about 150,000,000 pounds per annum out of a total of about 1,200,000,000 pounds as the world’s production, but to logically proceed from this nucleus to a much larger trust which would first perhaps take in the United Verde, Calumet & Hecla, and every large copper mining interest in this continent and extend ultimately to other continents, embracing the Rio Tinto properties of the Rothschilds as well as all other important producers. In the carrying out of these plans it was estimated that to acquire approximate control of the entire copper production of the world, about 1,200,000,000 pounds per annum, would involve the issuance of an approximate share capital of \$1,200,000,000, thus capitalizing

copper production at the rate of one dollar for each pound of copper produced. The original formation of the trust was, therefore, based on a sound proposition from the standpoint of its promoters and on the only broad rational basis, that any trust that contemplates the issuing of watered capitalization in large amounts can be based on, and be successful. It aimed at and saw the necessity for acquiring a monopoly of the copper production of the world, the purpose being to restrict the production to what might be the legitimate at about twenty-two cents per pound."

Record, Vol. II, pages 714-715.

Of this statement he said:

"That is a fair statement of facts, with quite a decided stretching, perhaps, of conclusions. I do not agree with the trust—where they bear down on the trust end and the restrictions, etc., as I think they are wrong there. We did intend to capitalize the copper of the world on about a dollar a pound basis, which we believed to be a fair one, and I believe so yet."

Record, Vol. II, page 715.

No testimony was offered by appellees to overcome the foregoing from one who undoubtedly was concerned in bringing the Amalgamated into being; but the appellants having called one Albert C. Burrage, likewise participating, an effort was made to draw from him vindictory expressions. How successful this attempt was may be shown to the court by appellees.

In the year 1905 the Amalgamated sent out to its stockholders a statement from which the following is taken:

"The Amalgamated Copper Company was organized in April, 1899, with a capital stock of \$75,000,000. For three months prior thereto, copper was selling at between sixteen and seventeen cents a pound, and there was no accumulation of stocks in the hands of the producers. Scarcely any new discoveries of

copper had been made in the United States for several years, and the uses of the metal were so rapidly increasing, especially in the electrical field, that the most experienced observers of the market were of the opinion, that the price of the metal would not again fall under fourteen cents a pound, until new and extensive sources of supply were developed, of which there was then no present indication."

Record, Vol. II, page 582.

Whatever may have been the limits within which its projectors intended the Amalgamated should operate, it early acquired extensive interests in Arizona and Mexico, holding stock in the Inspiration and Greene Cananea.

Record, Vol. II, page 512.

Its successor, the Anaconda, has more recently acquired a stock interest in the International Smelting and Refining Company, owning or controlling, through stock ownership, a lead and copper smelter in Utah, a copper refinery in New Jersey and a lead refinery in Indiana.

Record, Vol. II, pages 860-861.

These acquisitions contemplate a further issue of Anaconda stock to the amount of the purchase price, as stated (*Id.*).

The Boston & Montana paid dividends at the rate of 172 per cent of the par value of its stock the year before it was absorbed,

Record, Vol. II, page 537,

and the Butte & Boston 50 per cent besides reducing its indebtedness materially.

Record, Vol. II, page 538.

Upon the foregoing the appellants make the following:

II. SPECIFICATIONS OF ERROR.

I.

The Circuit Court of Appeals of the United States for the Ninth Circuit erred in holding that though the acquisition of the property of the Alice Gold and Silver Mining Company by the Anaconda Copper Mining Company was in violation of the Sherman Anti-trust act the complainants could not avail themselves in this suit of such fact.

II.

Said Court erred in holding that the complainants could not be heard to assert or contend that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company referred to in the bill was made in violation of the Sherman Anti-trust act.

III.

Said Court erred in holding in effect that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company and the deed evidencing the same referred to in the bill were not made in violation of the Sherman anti-trust act.

IV.

Said Court erred in holding that a majority of the stockholders of the Alice Gold and Silver Mining Company as against the dissenting complainants, being stockholders, through its board of directors or otherwise, or that any number of stockholders as against any dissenting stockholders, might make a valid transfer of all the property of that company.

V.

Said Court erred in holding that the transfer of all the property of the Alice Gold and Silver Mining Company, despite the protest or dissent or without the concurrence of complainants, to the Anaconda Copper Mining Company or to any transferee is authorized as to them by the laws of the State of Utah.

VI.

Said Court erred in holding that the Utah statute of 1905 referred to in the opinion herein by Ross, Circuit Judge, authorized the board of directors of the Alice Gold and Silver Mining Company with the consent of the majority of the stockholders to sell and dispose of all the property of that corporation, as against dissenting stockholders.

VII.

Said Court erred in holding that the said statute, as against the complainants being stockholders of the Alice Gold and Silver Mining Company, a corporation of the said State of Utah in existence prior to the enactment of said statute, is not in contravention of the Constitution of the United States in the provision thereof which forbids any State to pass any law impairing the obligation of contracts, and it was error not to hold that such statute is, as against the complainants, violative of such provision of the Constitution of the United States.

VIII.

Said Court erred in holding that it was not ruled in the Supreme Court of Utah in the case of *Garey v. St. Joe Mining Company* (32 Utah, 497; 91 Pac., 369), that if such statute in terms authorizes such transfer it is violative

of the said provision of the Constitution of the United States, and said Court erred in not holding that it was decided in said case that the statute, if it authorizes such transfer, is so violative of such provision.

IX.

Said Court erred in not finding that the Alice Gold and Silver Mining Company had no power or authority to take, receive or hold stock of the Anaconda Copper Mining Company or any other corporation, or to receive or hold the stock of said last mentioned company transferred to it as recited in the bill of complaint.

X.

Said Court erred in not finding that there was no purpose entertained by the Alice Gold and Silver Mining Company at the time it acquired the stock of the Anaconda Copper Mining Company as recited in the bill, whatever purpose may have been in the minds of some of its directors or stockholders, to apportion such stock among its stockholders, or the cash value of the share of any stockholder preferring cash, or to wind up the business or disincorporate the company.

XI.

Said Court erred (in view of its finding that the price paid by the Anaconda Copper Mining Company for the property of the Alice Gold and Silver Mining Company was inadequate, that information in the possession of the purchaser affecting the value of the property was not disclosed to the stockholders of the selling company, and that the burden resting upon the first above mentioned company and the defendants to show that an adequate price had been paid and that the sale was a fair one had not been met), in

not holding that the sale and transfer and the deed evidencing the same referred to in the bill each is void.

XII.

Said Court erred in not holding that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company and the deed evidencing the same, attacked by the bill, each is void:

(1) Because the same was made in violation of the Sherman Anti-trust act.

(2) Because the Alice Gold and Silver Mining Company had no power to dispose of all of its property as against the complainants or any of them without their consent.

(3) Because of the relations subsisting between those controlling the affairs of the Alice Gold and Silver Mining Company and the affairs of the Anaconda Copper Mining Company, they being substantially the same persons, a valid purchase could not be made by the last named company except on full disclosure, neither was the price paid adequate, and because the burden was upon the said last named company to establish in this suit full disclosure and the payment of an adequate price, and neither fact was established by the evidence.

(4) Because the transfer and deed assailed by the bill were each made in violation of the Sherman Anti-trust act.

XIII.

Said Court erred in not entering, or directing to be entered, a decree annulling the deed referred to in the bill of complaint transferring the property of the Alice Gold and Silver Mining Company upon the return by, and directing the return by the Alice Gold and Silver Mining Company

to the Anaconda Copper Mining Company of the stock received in payment for such property together with the accrued dividends thereon.

XIV.

Said Court erred in holding that the decree entered in the trial court was justified or required by the decision of the Supreme Court of the United States in the case of *Mason v. Pewabic Mining Company*, 133 U. S., 50.

XV.

Said Court erred in affirming the decree of the United States District Court for the District of Montana, which decree was erroneous for the reasons assigned in the Assignment of Errors in the appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, which assignment is hereby, by this reference made a part of this assignment on appeal to the Supreme Court of the United States.

III. ARGUMENT.

I. Introductory.

For reasons heretofore adverted to, both the District Court and the Circuit Court of Appeals held that the burden was on the Anaconda Company to prove that the consideration paid by it was adequate and that it had not done so; in other words, the consideration for the transfer was inadequate.

Under settled rules that finding will stand in this court unless it is plainly against the weight of the evidence. If it is adhered to and the court should adopt the view

of Judge Ross that the decree can not be justified by the decision in *Mason v. Pewabic Mining Company*, it will not be necessary for it to inquire further; a reversal will follow, with directions for the entry of a decree annulling the sale. Should the court conclude, however, that the case of *Mason v. Pewabic Mining Company* would otherwise be applicable, it will be necessary to inquire—

(1) As to whether the majority of the Alice stockholders were entitled to make a sale of *all* of its property.

(2) That question being determined in the affirmative, whether the Alice Company had the right to acquire and hold 30,000 shares of Anaconda stock.

(3) That question being determined in the affirmative, whether dissenting stockholders may, in this action, be heard to maintain that the transfer is in violation of the Sherman act and whether it is so violative.

A negative answer to either of the first two inquiries, or an affirmative answer to the last, will require a reversal of the decree appealed from.

It seems appropriate accordingly first to direct the attention of the court to the case of *Mason v. Pewabic Mining Company*.

A decree was entered in that case in the Circuit Court from which it came to this court, substantially like that found in the record herein.

At the outset attention is invited to the fact that in the aspect in which it is considered applicable here, the decree in that case never had the approval of this court. It expresses the views of the circuit judge before whom the cause was tried and that judge alone.

In that case the charter of a corporation had expired and under the law the former directors had become trustees whose duty it was, as such, to sell off the property of the corporation, reduce it to cash with all reasonable expedition and distribute the avails among its stockholders.

This principle is referred to in the opinion of Mr. Justice Miller in the case.

Instead of discharging this duty the directors continued to carry on the business of the company for a year and then a meeting of the stockholders, held as though the corporation were a living thing, in form empowered the directors to transfer the property of the defunct corporation to a new company for stock therein, the resolution directing the transfer containing a proviso that in case a stockholder should not take stock of the new corporation he was to receive his pro rata share in money. "The bill," to quote from opinion, "prayed for the appointment of a receiver to take charge of the effects of the Pewabic Mining Company, that they might be sold, the debts of the company paid, and the remainder of the proceeds distributed among the stockholders."

133 U. S., 53.

The directors, as trustees, having failed to perform their duty, it was asked that a receiver be appointed by the court through whom it could be done. The defendant trustees, on behalf of a company organized to take over the property of the old corporation, offered to award to the dissenting stockholders their proportionate share of the stock of the new company or to pay them for it on the basis of \$50,000 for the entire property. At the hearing the directors whose disposition of the property was challenged conceded it to be worth \$75,000, the master found it to be of the value of \$498,412.24, and it actually brought \$710,000 at the sale ordered, as will appear from the report of the case on a second appeal in

145 U. S., 349-361.

The contentions of the parties are thus stated in the opinion in this court on the second appeal:

"The minority appealed to the courts, and there the litigation was carried on for years; the minority insisting upon a sale, the majority upon the transfer of the property to a new corporation."

145 U. S., 356.

The decree ordered a sale, as prayed, but directed that in case no bid in excess of \$50,000 should be received, the resolution referred to should be carried out and payment made to complainants on the basis of \$50,000 as the value of the company's property. The complainants got more than they asked. They asked a sale, they got it, and they got it with a guarantee that in no event should they realize on their stock on a basis of less than \$50,000 as the value of the property of the company. The defendants were continuing their offer to pay on that basis. The decree practically ordered a sale with an upset price.

Whether the trial court was justified in giving to the complainants the guarantee which the decree accorded them, did not become the subject of review. Obviously it was to the interest of the complainants to have the protection it gave them, and though they appealed from the decree, averring error in the refusal of the court to give them an accounting, they made no complaint of the proviso referred to. The defendants appealed from the decree and complained of that part which ordered a sale, but made no complaint of that part which operated to confirm the proceedings they had taken if no bid in excess of \$50,000 should be received.

Because at the sale, the property brought a sum vastly greater than \$50,000, the complainants had no occasion to object to that part of the decree which provided that the sale should stand confirmed if the property did not bring in excess of \$50,000. The defendants could not complain of that part of the decree because, so far as it went to con-

firm the sale, it was in accordance with their demands. They were objecting to the public sale provision and demanding that the transfer stand.

If the case of *Mason v. Pewabic Mining Company* is to be followed it must be because the reasoning under which the Circuit Court reached the conclusion it did is now approved, not because of any principle announced in the case in this court.

Dismissing altogether the contention here made that the Alice could not become the holder of Anaconda stock and that the transfer was made in contravention of the Sherman act, the essential difference between the two cases lies in the fact that the Pewabic Company had been dissolved by operation of law and the court *had to order a sale*. This distinguishing feature is referred to in some comment on the case in

4 Thompson on Corporations (2d Ed.), 4613.

The report of the Pewabic Mining Company case affords no clue to the course of the thought of the circuit judge leading him to direct that the sale attacked in that case should stand confirmed if no more than \$50,000 should be received, the dissenting stockholders to have the privilege of receiving from the purchasing company their pro rata share of that sum, in lieu of stock in the new company. Judge Ross comments on the like feature of the decree in the instant case thus:

"How a sale of all of the property of a private corporation, for an inadequate price and which is otherwise unfair and wholly illegal, made by its board of directors with the consent of a majority of the stockholders but in spite of the dissent of a minority of them, can be subsequently rendered legal by offering the property at public sale to see if at such sale it will bring more, I am unable to understand."

Record, Vol. II, page 1010.

In the *Pewabic Company* case, the directors, as stated, were *obliged* under the law to make a sale—to reduce the assets of the company to cash—it having expired by limitation of law. In the case before us neither the directors nor the stockholders were *obliged* to make a sale, though it be admitted, as the court held, they *had a right* to make a sale of all the company's assets. The appellants dispute that they were entitled under the circumstances to make a sale of all the company's assets. But waiving that contention and conceding they had the *right* to make a sale, they were under *no obligation*, as were the directors in the *Pewabic* case, to sell. Being at liberty to sell or not to sell they had the right to declare the terms and conditions under which they would sell. They did so. They agreed to sell for 30,000 shares of the stock of the *Anaconda Company*. They did not agree that the property might be sold at public auction, to go to the *Anaconda Company* only if it should be the highest bidder, but for 30,000 shares of the stock of that company if no bid should be received in excess of \$1,500,000.

The gentlemen who engineered the transaction never thought of proposing to the stockholders of the *Alice* the disposition of its property on any such basis. It was evident that those in control of the *Anaconda* wanted this property for that company. They gave no evidence of being simply desirous of disposing of it that those in such friendly relations with them, the stockholders of the *Butte Coalition*, or any other stockholders of the *Alice*, might get the benefit of the bargain being offered. They wanted the property. Successful bidders would have thwarted their purposes and their plans.

The decree directed a method of disposition of the property to which neither the *Alice* nor any of its stockholders ever assented and in respect to which there never was any corporate action whatever. The court certainly has no

power to dispose of the Alice property according to its plan because it can not sanction the method by which it was disposed of through action formally taken at a meeting of its directors, in form ratified at a meeting of its stockholders. It was never proposed by anyone to a meeting of the Alice stockholders, that the property be put up and sold to the highest bidder, and certainly the property of a company still in being, can not be sold without a vote of the stockholders regularly assembled. Nor was it proposed that the property be sold to the Anaconda Company for 30,000 shares of its stock unless at a public auction some one should bid more than \$1,500,000, the value of such stock. The Anaconda never offered to take the property on such terms. For reasons advanced heretofore, it had no disposition to let the property get away from it by inviting a free and open competition. It did not do so when it sought to invest itself with the title to the Boston & Montana properties, or those of the Parrot or of the Red Metals Company, or any of the other constituent companies of the Amalgamated. By that plan the properties which the Amalgamated had been at such pains and at such cost to unite in one control might have passed into the control of sundry individuals or corporations, restoring the condition that prevailed prior to 1899.

It was not in its plans to invite or permit any such contingency, so it submitted to none of the companies a proposition to give a certain number of shares of its stock should they respectively not realize a sum greater than the value thereof at an auction sale to be held. Certainly it neither dealt nor offered to deal on any such basis with the Alice and its stockholders. The court made a contract for the parties which neither of them ever assented to.

The learned judges joining in the majority opinion offer no reason for departing from the usual course of annulling a sale found to have been made upon an inadequate consideration, the burden being upon the purchaser, owing to the at-

tendant circumstances, to show full value paid. They seem to have believed they were following a rule laid down by this court or at least a precedent which had its express approval.

The judge of the district court, a jurist of ability, ruled that the dissenting stockholders had a right to have the value of the property subjected to the "acid test," as he expressed it, of a public sale. The decree went, accordingly, that the property should be offered at public sale and should stand, as stated, or be set aside, as thereat the property did or did not produce more than the value of the stock given for it by the Anaconda, found to be million and a half.

His idea apparently was that the appellees having failed *at the trial* to establish that the consideration paid was adequate, the question should be tried out by the test of a sale.

A sale at public auction is not an "acid test" of value at all. Indeed it is no test. It is so far from being a test that many courts have refused even to permit evidence of what property brought at a judicial sale at public auction to be admitted in proof of value.

Those which countenance admission of testimony of that character refer disparagingly to it as being *some* evidence of value.

The Supreme Court of New Jersey said in

Martinett v. Maczkewez, 35 Atl., 662:

"In inquiries of this nature it has been customary to show the market value of the property if it has a fixed rate of that kind, and, if it has no such estimation, to prove its value by the opinion of experts, and by an exposition of the state and condition of the things sold. In such an inquisition the price obtained at a sheriff's sale would seem to be wholly valueless. When a willing seller and a willing buyer agree and fix the price of an article, it is obvious that it is reasonable to infer that such estimation approximates closely to the real value of such article; but in an official sale by auction the

owner has no voice in the affair, and each bidder is striving to obtain the thing sold, not at its actual worth, but at a bargain. It is vain to deny, for all experience attests the fact, that, as a general thing, the attendants at a public auction of personal property are there with the expectation of acquiring the articles purchased much below their cost in the market, and it is deemed that, as criteria of real value, such transactions can have no effect except to mislead."

The rule thus announced was applied in

In re McAusland, 235 Fed., 173, 189-190.

In the opinion of the Court of Civil Appeals of Texas, prices realized at forced sales possess but slight evidentiary weight.

Rickards & Co., v. Bemis & Co., 78 S. W., 239.

The market value of property and what it will bring at a forced sale are two quite different things.

Street Ry. Co., v. Walsh, 94 S. W., 860.

It would unquestionably be error for a court to instruct a jury that the value of property is what it would bring at a judicial auction sale.

The desperate debtor begs for an opportunity to sell off his property at a private sale to satisfy his obligations rather than to have it disposed of under the hammer, long experience and obvious reasons convincing even the dullest minds and the least sagacious intellects that the full value is rarely, if ever, realized at such a sale. It is ventured that in all the history of equity jurisprudence in this country, or in England, no similar decree can be found in which the court, having held that a sale was made upon an inadequate consideration, the circumstances being such as to impose upon the purchasers the burden of proving adequacy, ordered an auction sale at an upset price, being that paid on the sale held to be fraudulent.

The term is used in no opprobrious sense, as indicating a deliberate purpose to wrong. Reference is made to that class of sales denounced by the courts because of the relation subsisting between the buyer and the seller in consequence of which the law casts upon the former the burden of proving that full value was given. In many, if not most such cases, the wronged suitor is impecunious. He might as well submit in silence if all he can hope for is that his property will, if he succeeds, only be offered for sale at public vendue to the highest bidder.

The appellants in this case were utterly unable to bid, themselves, upon this property. They had not the means to enter the competition. A sale of mining property at public auction, because of the difficulty of arriving at its intrinsic value, would probably result in a greater proportionate loss to the owners than almost any other kind. Bidders who would be obliged to go to at least \$1,500,000 would not be numerous under any circumstances. The Anaconda had accurate and reliable information concerning the property in question and the surrounding country. It could explore and operate the Alice ground at less risk and cost than any one else. Mr. Gillie testified, as must be obvious, that the ground is worth more to the Anaconda than to any one else. With its corps of chemists and metallurgists, its smelters with their laboratories, it could work out at a minimum cost of the problem of treating the refractory zinc ores. It could penetrate the old workings by either drifts or cross-cuts, from the Moose shaft or the Badger State shaft. Why should any bidder appear to compete with it at the auction sale ordered? Every one who had \$2,000,000 or thereabouts, for so much it took, which he was willing to invest in a non-producing mining property, knew in advance that the Anaconda could afford and could well afford to give just a little more than he was justified in offering for the property, and in all probability would raise

his bid. He would have some chance if the sale should be made upon sealed bids instead of at public auction. The appellants asked that the sale be made upon sealed bids, but their request was refused, perhaps properly in view of the Federal statute on judicial sales.

Moreover a prospective bidder would recognize that should he be successful an appeal would, in all probability, be taken by the appellees from the decree through the intermediate appellate court to this court, with a possibility of a reversal. Meanwhile, he could not prudently make expenditures for the development of the property, and nearly \$2,000,000 of his capital would be tied up for two years, certainly, and possibly for as many as four. It should be stated that the upset price was fixed at \$1,500,000 with the amount of the dividends which the Alice had been paid on the Anaconda stock, and other items aggregating almost the great sum last above named.

No one could successfully bid against the Anaconda and no one appeared to bid. The reason given is not the only one that would naturally deter bidders. The newcomers would have been regarded as interlopers in the camp. Few people would care to invest \$2,000,000 in mining property in Butte and so much more as might be required to develop it, the property having been wrested from the Anaconda in a lawsuit. The conditions were not such as to invite bidders. The event was what might have been anticipated. The decree held the word of promise to the ear, but broke it to the hope.

Judge Ross declined to accept the view that the value of the property would be conclusively determined by an auction sale, saying:

"In the present case there was no bidder at all — thus, according to the decision of a majority of this court, there was rendered legal and valid the sale and conveyance of the entire property of an existing cor-

poration, which sale and conveyance it was found and adjudged by the court below, and is found and adjudged by this court, were at the time they were made unfair and wholly illegal."

Record, Vol. II, page 1010.

Mason *v.* Pewabic is inapplicable to the case before the Court, but if it were otherwise controlling, it would still be incumbent to inquire whether the majority stockholders of the Alice were at liberty to sell *all* its assets, whether that corporation was empowered to take and hold Anaconda stock, whether the appellants may contend that the sale or exchange under review violates the Sherman act, and whether it was, in fact, made in contravention of the statute. These questions are now examined.

II. Is the Sale of All the Alice Property Justifiable?

Confessedly the rule at common law is that neither the directors nor any number of stockholders less than all have any power to dispose of all of the property of a corporation.

Forrester *v.* B. & M. Co., 21 Mont., 544.

III Thompson's Com. on Corp., 2421.

VII Thompson's Com. on Corp., 8356.

Noyes on Intercorporate Relations, secs. 114, 281.

The rule as stated in these authorities is, as it is understood, admitted by the appellees, and the appellants, upon their part, admit that it is within the power of the directors and a majority of the stockholders of an insolvent corporation or a corporation in danger of insolvency to convert all of its property into cash, with a view to the division of the remainder among the stockholders and the dissolu-

tion of the company; in other words, a sale of all of the property of a corporation that is insolvent or threatened with insolvency may be made as an incident to the winding up of its business. The conditions authorizing the sale can be gathered from the following quoted in the opinion in the Forrester case from that filed in *Treadwell v. Manufacturing Co.*, 7 Gray, 393, to wit:

"Upon the facts found in the case before us, we see no reason to doubt that the vote of the majority of the stockholders, for the sale of the corporate property, and the closing of the business of the corporation, was justified by the condition of their affairs. Without available capital, and without the means of procuring it, the further prosecution of their business would be unprofitable, if not impracticable. Under these circumstances, it was in furtherance of the purposes of the corporation to pay their debts, close their affairs, and settle with their stockholders on terms most advantageous to them."

It will be noted that in that case the corporation was without capital and *without the means of procuring it*, and the concluding paragraph shows the purposes for which the sale is authorized. With reference to that case, after quoting as above, the Montana court, speaking through Mr. Justice Pigott, says:

"In that case, as in *every one cited by the defendants*, the corporation was unable further to prosecute the purposes for which it was created."

But in this connection a distinction must be drawn between a losing corporation and one that is insolvent or threatened with insolvency. The bare fact that in the way the business of the company has been conducted it does not produce a profit, does not justify the majority of the stock-

holders in abandoning the purpose for which the corporation was organized and winding it up.

Noyes on Intercorporate Relations, sec.112.

The following quotation is made from the opinion in a recent case :

Butler v. New Keystone Copper Co., 93 Atl.,
380-383,

namely :

"If the business be unprofitable and the enterprise hopeless, the holders of a majority of the stock may, even against the dissent of the minority, sell all the property of the company *with a view to winding up the corporate affairs*. Cook on Corp. (6th ed.), 670; Thompson on Corp. (2d ed.), 2421, 2424. See note in 35 L. R. A. (N. S.), 396, where many cases are collected."

Repeated assertions were made in the argument before the trial court that the property of the Alice Company was practically worked out, that it was neglected and allowed to go to ruin, and that it was practically abandoned by its owners as well nigh worthless; that the company was in debt for the care of the property to an amount aggregating \$34,000 or thereabouts, and that it was without means to discharge its obligations; but neither the evidence supposed to give foundation for these comments, nor the comments themselves, can obscure or disguise the fact that the appellee Anaconda Copper Mining Company gave for the property what the appellants aver was the equivalent of \$1,200,000, and which the appellees themselves assert was worth \$1,500,000. It can scarcely be said that a company having property worth from \$1,250,000 to \$1,500,000, and owing \$34,000 is either insolvent or in danger of insolvency.

The contention made by appellees in this behalf was not urged with the fullness before Judge Bourquin with which it was made before Judge Hunt, who dismissed it as quite untenable. After reviewing the history of the property, he said in the course of his opinion:

"It cannot be said that the Alice Mining Company was insolvent, though it appears to have been a losing corporation. However, no effort, other than the sale under investigation, appears to have been made to sell the property or to finance the company so that it could operate, or to dismiss the debt of \$34,000 due to the Butte Coalition Company, nor is there anything to show that the Butte Coalition Company was seeking to collect the debt. The property seems purposely to have been kept idle for years past. Nor does it appear that efforts to exploit the property were recently made. Surely a property which sold for the equivalent of \$1,300,000 would have had little or no difficulty in raising \$34,000 due to another corporation.

Record, Vol. I, page 170.

In this connection, however, the attention of the court may be directed to two pertinent items of evidence in the record.

First. It is not even intimated in the circular sent to the stockholders asking ratification of the sale which the directors had already agreed upon that the company was either insolvent or in danger of insolvency, nor was it suggested that the sale was necessary because of such condition. The mind must be closed to the perfectly obvious facts of the case to indulge in any such assumption. Reference was indeed made to the balance sheet made part of the circular which showed an outstanding indebtedness, trifling in amount, however, as pointed out by Judge Hunt, in compari-

son with the conceded value of the property, but it was not even suggested that the creditor—which, by the way, was the Butte Coalition, the largest stockholder—was importunately demanding liquidation or that even a request for payment had been made. The transfer was recommended because machinery and equipment were required to do development work and to treat the ores which the prospective purchaser was able to supply and which the Alice Company could not provide for want of means. The conveyance was further recommended because like action had been taken by a large number of other companies referred to in the circular and the hope was held out that the stock of the Anaconda, so well able to make the expenditures necessary to the economical working of the property and the reduction of the ores which might be extracted from it, would prove much more remunerative than the property had been or would be likely to be if it continued in the ownership of the Alice.

Second. The testimony of Mr. C. I. Kelley forbids the belief that the property was sold either because it had not paid or because the company was unable to meet its obligations. A plan was formed, by whom it is now immaterial to inquire, to consolidate the properties of the Amalgamated companies. It apparently embraced those of the Red Metals Company, whose stock was owned by the Butte Coalition, but did not include the Alice. It was a part of the plan, it is now asserted, to dissolve the various companies, but the Butte Coalition owned the major part of the stock of the Alice, and it became necessary to widen the scope of the consolidation plan to take in the latter that the Butte Coalition might be dissolved when the Anaconda stock should be distributed.

Record, Vol. II, page 852.

Mr. Ryan tells tersely the story in this sentence :

"The Alice property was bought at that time simply because this other consolidation plan was going through and the Alice Company was without means to develop its own property and I was anxious to have the Anaconda take it over and enter upon its development."

Record, Vol. I, page 405.

That was why the transaction was entered upon—the distressed financial condition of the Alice is an after-thought urged because of what seems the legal necessities of the case.

When the Ryan option on the Walker stock was taken up, the indebtedness of the Alice amounted to about \$27,000, which probably included the cost of the construction of a new hoist after the destruction of the old one by the fire. The new owners increased the debt somewhat more rapidly, incurring nearly \$2,000 of it for expenses of the eastern office, the necessity for which is not made obvious by the testimony, but the aggregate was inconsequential and the Butte Coalition appeared to be carrying the load without any complaint, as the Walkers had done when they were in control.

If, however, the affairs of a corporation get into such condition as that a sale of all of its property is justified, that sale must be made *for a pecuniary consideration*, as a step towards the liquidation of the company. Noyes says :

"Transfer of Entire Corporate Property Without Unanimous Consent Requires Monetary Consideration.—Upon the winding up of the affairs of a corporation, every stockholder has a right to insist that the property of the corporation be converted into money and that the proceeds be distributed. He has a right to require the valuation of the corporate property to be fixed by a sale.

"Similarly, it is the right of every stockholder to demand that sales of corporate assets made preliminary to, and for the purposes of, liquidation shall be for money. He cannot be compelled to accept 'chips and whetstones' instead of cash. Whether the exchange of one species of property for another is even a step towards liquidation depends entirely upon their comparative marketableness. An exchange is not a sale."

Noyes on Intercorporate Relations, 118.

The learned trial judge tersely expressed at the hearing the rule in these words, "The corporation can sell, but it cannot swap."

This doctrine was announced in substance in the Forrester case.

As indicated above, the court recognized that a sale of all of the property of the corporation might be made, its language being as follows:

"As we have said, at common law, the directors (at least with the consent of the majority of shares) may sell the entire corporate property *when the exigencies of a waning business require such action*,"

but this does not justify anything but a sale, and, accordingly, the court refused to recognize the validity of a transfer in exchange for stock of another company. Touching that feature of the case, the opinion says:

"Manifestly the transfer proposed lacks an element necessary to constitute a sale, namely, a pecuniary consideration. To constitute a sale there must, as a general rule, be a consideration in money."

This whole subject of the right of a corporation to transfer all of its assets is the subject of an extensive note to the case of

Tanner v. Lindell Ry. Co., 103 Am. St., 548,

to which the court is respectfully referred.

It is argued, however, that the sale of *all* the property of the corporation is justifiable under a doctrine asserted in certain cases of which

Lang v. Reservation M. & S. Co., 93 Pac., 208,

may be considered as representative. With it is grouped

Traer v. Lucas Prospecting Co., 99 N. W., 190.

This last-mentioned case is invariably mentioned in support of the general proposition asserted by some courts that the right to sell all the property of a corporation exists notwithstanding the protest of minority stockholders. It does not stand for the non-existence of such right except in exceptional circumstances. The general rule is against the doctrine of that case. Judge Pigott says in the Forrester case that there is no conflict in the decisions, that they all recognize the general principle that the assent of all stockholders is necessary to a sale of *all* the property of the corporation. His language is—

"Our attention is called to certain decisions which are said to recognize a contrary doctrine, but examination discloses no conflict of opinion among the courts of last resort."

And then, after referring by way of example to Treadwell v. Manufacturing Co., 7 Gray, 393 (a case by the way made the subject of comment in the brief of defendants below), he adds,

"In that case, as in every one cited by the defendants, the corporation was unable farther to prosecute the purposes for which it was created."

He was not justified in saying there is "no conflict, etc." Some few courts, it must be admitted, have announced the existence of a general power though in all of them, perhaps, insolvency in fact, existed, so that the judgment was right though the reasoning was wrong.

It is worthy of note that Judge Hunt, as Associate Justice of the Supreme Court of Montana, concurred in the opinion in the Forrester case and it may be remarked that the opinion filed by him herein discloses that he did not tolerate the idea that the present case fell without the general rule announced by Judge Pigott.

But in practically every collection of cases dealing with the subject, notes, text-book declarations, etc., *Traer v. Lucas* is cited as announcing a doctrine opposed to that supported in the Forrester case.

The Lang case may be profitably considered. In line with it is a later case in the Supreme Court of Washington,

Smith v. Flathead River Coal Co., 119 Pac., 858.

In both of these cases the corporation had been reduced to such circumstances as justified a sale to save something out of the wreck of a business. But the articles in each case conferred not only the common-law powers of purchase and sale that attach to any business corporation, but also the right to "deal" in mines and mining property. The Alice Company was invested with no such power by its articles. In view of that provision in its charter, the court said of the corporation whose acts were considered in the case last-above cited:

"It was a speculating and prospecting corporation, etc."

If it was given power to operate mines, it was likewise given power by the significant word referred to, which the

court does not omit to quote from the articles in each of the cases, to engage in the business of buying and selling mines. In *Smith v. Flathead*, it is said,

"There is no showing that the sale disrupts the corporation or that *the proceeds will not be invested in other enterprises* consistent with the articles of incorporation."

And in the *Lang* case occurs this language:

"In the case before us the sale does not disrupt the corporation, nor is it contrary to the purposes for which the corporation was formed. On the contrary the corporation will be in as good a condition to proceed with the objects it was formed to promote after the sale as it was before."

In other words, it was held that the company being formed to "deal" in mining property might sell out its holdings with a purpose to invest the avails or such part of it as did not represent profits, in other similar property, likely to undergo the same transmutation. That is the very heart of the problem. The authorities deny the right generally to sell *all* the property of a corporation, because to do so would not be in accordance with any purpose for which the company was created, but would operate to disable it, so that it could not carry out the purpose for which it was created.

Even a right to "deal" in mining property, however, would seem scarcely to authorize a sale of all property including office furniture, bills receivable, etc., etc.

The Alice Company had, as stated, no power to "deal" in mining property. The adventurers who organized it limited its powers within relatively narrow bounds. It was in no sense "a speculating and prospecting company." It had, indeed, "power to buy, sell, lease, hold, own, and operate mines." Undoubtedly the Boston and Montana Company,

whose right to dispose of all of its property without the consent of all of its stockholders was denied in the *Forrester* case, was invested by its articles with like power. The opinion does not disclose and the writer has not access to the record to determine. It would be strange if a mining company should be organized under articles not expressly conferring such power. But it is immaterial whether the power was or was not expressed in so many words in the articles. It existed, nevertheless, a necessary incident of almost any conceivable purpose that may have been expressed in the articles. The power to acquire property necessary or proper to the conduct of the business for which a corporation is created and the power to sell and dispose of the same exists at the common law.

7 Am. & Eng. Ency., 734.

A like power must have existed in every case that ever announced the doctrine that a corporation cannot sell *all* its property without the consent of all its stockholders.

The rule relied upon by appellants was appealed to in

Keane v. Johnson, 9 N. J. Eq., 401,

but it was said in opposition that it could not be applied because the charter in that case expressly conferred upon the corporation the power of "purchasing, holding, and *conveying* any lands, tenements, etc." Touching this contention the court said:

"Now it is argued that the company have by this language the power to convey away all they have the power to purchase and to hold. The argument seems to me more plausible than sound."

And then the chancellor added that the language permitted land to be conveyed—

"when it is necessary or expedient to the objects of the incorporation that it should convey any particular property."

"So that," he declared, "it is only when the objects of the corporation require it that any lawful conveyance can be made."

The Utah Statute.—Reliance is placed, however, upon a statute of the State of Utah enacted in the year 1905, providing that :

"The corporation in its name shall have power to make all contracts necessary and proper to effect its purposes and conduct its authorized business; to sue and be sued; to have a seal, which it may alter at pleasure; to buy, use, mortgage, sell, or otherwise dispose of personal property; to buy, receive, use, sell, mortgage, lease or bond, or otherwise dispose of all such real estate as may be necessary, useful, or desirable for it to own, use, or dispose of for all its purposes. Such corporation shall have the right to disburse out of its profits actually earned and on hand such dividends, from time to time, as the directors may deem prudent. It may make all such by-laws, rules, regulations, not inconsistent with law or with other corporate rights and vested privileges, as may be necessary to carry into effect the object of the association, and such by-laws, rules, and regulations may be made in a general meeting of the stockholders or by the board of directors. And any corporation now existing, or that hereafter may be organized under the laws of this State for the purpose of mining, or the exploration or development of mining property, including lands bearing metal, stones, limestone, oil, petroleum, asphalt, and other hydrocarbons, shall, in addition to the powers above enumerated, have the power to purchase, take or bond or lease, or in exchange, or locate, or otherwise acquire any lands, mines, options, territory, fields, or claims, and to sell, convey, lease, bond, mortgage, dispose of or other-

wise deal in the same to such extent as the board of directors may deem prudent subject always to the provisions of the articles of incorporation and by-laws; *provided*, that in case the articles of incorporation do not provide for the sale or other disposition of the property of the corporation, then the act of the board of directors shall not be valid or binding on the corporation until confirmed by a vote of a majority in amount of the stock outstanding at a meeting of the stockholders duly called to consider such action of the board. When the articles of association provide that the property of the corporation may be sold, mortgaged, or otherwise disposed of by the directors or by the stockholders, sales made in accordance therewith shall be binding on the company."

If the act authorized in terms the transaction in question, the interesting inquiry would be presented, to be followed later, as to whether this law can constitutionally be held to apply so as to affect the relations of stockholders *inter sese* in the case of a corporation organized years before it came into existence. But does it purport to permit an exchange of *all* the property of a mining corporation for capital stock of another?

Reference has been made above to authorities holding that even the most general language in a charter authorizing a corporation to buy and sell lands is to be construed as authorizing not the sale of all the property of a company without which it can do no business, and for the purpose of putting it out of business, but only to sell from time to time such part of its real estate as is not necessary in the conduct of its business, or, perhaps, that can be disposed of with advantage, the proceeds to be invested in other more fit or equally fit. In other words, such a provision authorizes a sale in the course of the regular business of the corporation, not a sale intended to close up the business of the corporation.

See *Keane v. Johnson, supra*.

Indeed such is the very language of the statute which authorizes the corporation to sell or otherwise dispose of its property "for all its purposes," as recited in its articles.

In *Forrester v. B. & M. Co.*, the court pointed out that even a general power to buy, sell or exchange property would not authorize an exchange of all property of a corporation for stock of another.

Forrester v. B. & M. Co., 21 Mont., 562-563.

The statute ought to have a construction in conformity with this principle. It ought to be held to mean that in the case of a mining company, specifically referred to in the act, whose articles do not authorize a sale, etc., the consent of the stockholders as provided therein must be secured; in the case of those whose articles disclose it to have such power, the board of directors may dispose of its property in the regular course of its business without submitting the question to a vote of the stockholders.

But quite aside from that question the statute does not authorize the transaction under consideration because it is not a sale, as said by Judge Bourquin, but a "swap." A swap for stock of another corporation, which the Alice had no power to take, either, under the statute. And even if the statute permitted a corporation to hold stock of another corporation, the articles of the Alice did not authorize the acquisition by it of property of that character. Both the law and the charter of the Alice forbid its acquiring stock of the Anaconda.

By the act in question corporations generally are empowered to make all contracts necessary and proper to effect their purposes and conduct their authorized business (not contracts to put them out of business); to sue and be sued; to have a seal, which they may alter at pleasure, to buy, receive, use, sell, mortgage, lease or bond or otherwise dispose of all such real estate as may be necessary, useful, or

desirable for them to own, use, or dispose of for their purposes. And a mining corporation is further given "the power to purchase, take on bond or lease, *or in exchange*, or locate or otherwise acquire any *lands, mines, options, territory, fields or claims*, and to sell, convey, lease, bond, mortgage, dispose of, or otherwise deal in the same to such extent as the board of directors may deem prudent, etc."

It may take *mines, options, territory, fields, or claims* by purchase or exchange. *Stock of another corporation is excluded* by necessary inference. *Expressio unius est exclusio alterius*.

It is elementary law in America that one corporation cannot hold the stock of another unless expressly authorized by statute so to do.

But the Forrester case above referred to goes further and declares that waiving the question of the right of a company to sell or otherwise dispose of all of its property by one transaction, it is a change of corporate habitation that was accomplished, that there was neither a sale nor an exchange in any just or legal sense. The transaction being investigated was identical with that considered in the Forrester case. The court said, and the language is entirely appropriate as applied to the facts of this case:

"A stockholder, we think, may not be compelled to take, in lieu of his stock in a Montana corporation, an equal number of shares in the New York corporation, or the value of those shares; nor can he be compelled to accept payment for his shares in any other way than that prescribed by the Montana statute on a dissolution of the Montana corporation."

This comment by the court is sufficient answer to the claim that the transfer was made as a step in the liquidation and dissolution of the company. It accords with views expressed in

Morris v. Elyton, 125 Ala., 263,

which deserves to be studied with care in this connection.

Constitutionality of Utah Statute.

But if the statute could be held to extend to a transaction such as that under investigation, it cannot be, consistently with the constitution, held to apply to corporations created before the act went into effect.

In the act under which the Alice Company was incorporated was a provision to the effect that the legislature might at any time modify or repeal it.

Comp. Laws of Utah, 1876, page 232.

On the admission of the State into the Union in 1895, its constitution reserved to the legislature the right to amend or repeal any law governing the charters of corporations.

The contract implied in a corporate charter has a three-fold aspect :

- (1) It is a contract between the State and the corporation.
- (2) It is a contract between the State and the stockholders.
- (3) It is a contract among the stockholders *inter se*.
Somerville v. St. Louis, 46 Mont., 268.

The court is familiar in a general way with the controversy which has been waged and the conflict in the decisions as to whether the right thus reserved extends to such changes as disturb the relations of the stockholders among themselves, or whether it was intended only for the protection of the public and is applicable only to such provisions as affect the relations between the corporation and the State.

It is conceded that at the time the Alice was incorporated and down to the time of the passage of the act of 1905, any stockholder might prevent a disposition of all the assets of at least a going, prosperous corporation. Such was the law unquestionably, and that law entered into the contract between the incorporators and their successors in interest—that is to say, that at the time the Alice Company was incorporated, the stockholders entered into what amounted to a contract among themselves that the entire property of the company should not be disposed of except for the purposes of liquidation, in the case of its insolvency, without the consent of every stockholder. The question is presented as to whether it is within the power of the legislature thus to modify the contract entered into.

The view contended for by the appellants is upheld powerfully in

3 Clark & Marshall, 631 (a), (b), (c), (f).

It will be unnecessary, however, to enter into any discussion of the merits of the conflicting views touching the extent of the reserved right to amend or repeal, or to inquire which is the better grounded in reason or more amply supported by authority. The question is disposed of, for the purposes of this case, by the direct adjudication of the Supreme Court of Utah in favor of the contention last above referred to, namely, that the subsequent legislation authorized must not affect the nature of the contract of the incorporators *inter sese*.

Garey v. St. Joe M. Co., 91 Pac., 369.

In the opinion in that case will be found an exhaustive discussion of the question and of the reasons impelling the court to the conclusion at which it arrived, and to which it adhered upon a motion for a rehearing.

The opposite view was taken by the Supreme Court of Montana in two cases.

Allen v. Ajax Mining Co., 30 Mont., 490.

Somerville v. St. Louis, 46 Mont., 268.

The Ajax case was affirmed in the Somerville case. The former considered a statute like that of Utah passed in 1905 and here appealed to, authorizing a sale of all the property of a corporation on a vote of two-thirds of the stock. The latter upheld a statute making stock of corporations assessable, there being no law by which an assessment could be levied at the time the organization was effected. It was just such a statute which was considered in *Garey v. St. Joe Mining Co.*

It is not necessary now to inquire into the soundness of the view expressed or the course of reasoning followed in the elaborate opinion of the Utah court. The decision is controlling on this court upon rules thoroughly settled by a long line of cases. It construes and gives effect to the reservation act of 1874, the principle of which is carried into the Utah constitution. It holds that the general language of that act is to be restricted in its significance so as not to include the authority to enact laws which will impose terms upon the stockholders of a corporation *inter sese* other than those of their contract when they embarked upon the enterprise and organized the corporation. The view was expressed that to give the statute a broader interpretation would make it violative of the Constitution of the United States. When the highest court of a State interprets a statute of that State or a provision of its constitution, or when it declares that a statute is void for conflict with the Constitution, that is, has no existence, its decision becomes binding upon all the Federal courts. It is even held that if this court has given an interpretation to a statute, it will, should a later case upon

the statute come before it, conform to a varying construction meanwhile given to it by the State court.

Forsythe v. Hammond, 166 U. S., 506.

Louisiana v. Pillsbury, 105 U. S., 278-294.

When a State statute was restricted in its application because giving it the broad significance to which the language used might properly extend it would make it unconstitutional, the construction thus given to it by the highest court of the State was held by the Federal court to be conclusive upon the latter.

Chicago v. Hackett, 228 U. S., 550.

By virtue of the ruling in *Garey v. St. Joe M. Co.*, the statute of 1905 must be held inoperative as against corporations organized prior to its passage, so far as it attempts to authorize a sale of *all* the property of a corporation against the protest of any stockholder.

Moreover it appears palpably to offend against the provision of the constitution of Utah that, with the exception of general appropriation bills and bills for the codification and general revision of laws, "no bill shall be passed containing more than one subject, which shall be clearly expressed in its title."

Sec. 23, Art. VI, Constitution of Utah.

The act in question appears to be a flagrant case of log-rolling legislation. Apparently some members desired to confer upon the directors and a majority of the stockholders the right to which appeal is made here. Some member wanted some change made in reference to the amendment of articles of incorporation. A third wanted an amendment in relation to the consolidation of corporations. A fourth

wanted some legislation in relation to railroad bonds, and a fifth desired validate i some acts, presumably void, done by corporations which had attempted to consolidate. They pooled their issues and put through the consolidated measure. All this will appear from the statute as published in the acts of the session of 1905.

In the Revised Statutes of Utah, 1898, a subdivision designated as Title II is devoted to the subject of corporations. Chapter I, under this title, deals with the subject of General Corporations and embraces sections 322, 338, and 340, referred to in the title of the act of 1905, dealing with the subjects, respectively, of the powers of corporations, amendments to articles of incorporation and consolidation of corporations, each respectively preceded by the subheads, "Powers enumerated," "Amendments," "Consolidation."

Chapter II of this title treats of the subject Assessments; III, Bank Corporations and Banks; IV, Building and Loan Associations; V, Insurance Corporations; VI, Loan, Trust and Guaranty Associations, and VII, Railroad Corporations. Section 444, the last of those referred to in the title of the act of 1905, is one of the sections of chapter VII. Besides thus uniting amendments to sections being parts of the chapter on railroad corporations with sections being parts of the chapter on general incorporation, the title gives no kind of intimation that mining corporations are to be invested by the amendment with any powers other or different from those of corporations generally, nor is there any suggestion in the title to the bill, that the right of a stockholder to object to a transfer of all of the property of the corporation guaranteed to him by the then existing law was to be taken away from him. The title simply apprises the citizen that an amendment is to be made to certain sections of the statutes affecting the powers of corporations. That would be understood by the ordinary reader to refer

to the powers of corporations generally. If an amendment was to be made by which mining corporations were to be granted other or different powers from those conferred upon corporations generally, or if, by the act in question, the directors of mining corporations or a majority of the stockholders thereof were to be invested with powers not to be exercised by other corporations, or the directors or stockholders thereof, plainly the statute should have so stated in order to meet the requirements of the constitution.

III. **Has the Alice Gold & Silver Mining Company the Power to Hold Stock of the Anaconda Copper Mining Company?**

The general rule of the common law is unquestionably against the right of one corporation to hold stock in another, unless expressly authorized by the law, though the authorities are undoubtedly divided on this question. The rule very generally adhered to was declared in Montana in the case of

MacGinniss v. Boston & Montana Mng. Co.,
29 Mont., 459.

In the opinion in that case it is said that Iowa and Maryland hold otherwise, the argument being that the power to hold and dispose of property is inherent in a corporation the same as in an individual, and that no express authorization is necessary. The courts holding the contrary doctrine, however, declare that unlike an individual, a corporation has no powers except those conferred upon it by statute, and that unless the right to hold stock in another corporation is expressly conferred it is withheld. Such is the doctrine announced by the Supreme Court of the United States.

Cal. Bank v. Kennedy, 167 U. S., 362.

The rule is tersely expressed by Noyes in the following terms:

"Sec. 264. *Necessity for Statutory Authority to Purchase Stock. Rule in United States.*—The charter of a corporation is the measure of its powers. It can exercise only such powers as are conferred upon it, either in express terms or by necessary implication, in the law of its creation.

"The purchase of stock in another corporation involves a participation in a new and distinct enterprise. A corporation can make such a purchase only when expressly authorized to do so by statute, or when the power can be implied as incidental to the powers specifically granted."

Combining the propositions considered above under sub-heads 2 and 3, the same author says at section 281, as follows:

"Upon principles already considered at length, a corporation has no implied power to transfer its entire property to another corporation in exchange for its shares. The acquisition of stock, in such a manner, is *ultra vires* and an infringement upon the rights of dissenting stockholders."

In accordance with the principles laid down in the quotation last above made, it was held in the case of

Elyton Land Co. v. Dowdell, 20 So., 981-983,

that even though by its articles a corporation was authorized to "take stock" in other corporations, it was not authorized thereby to effect its own dissolution by a sale of all its assets, taking the stock "of another company in payment for distribution to the stockholders or any shareholder without the consent and contrary to the preference of the shareholder," and, in the course of the opinion, the court

adds: "It may be that a private business corporation may sell out its entire property by and with the consent of less than all its stockholders, for the purposes of paying its debts, or for the purposes of dissolution and settlement; but when this is the purpose, it must be clearly understood, and the terms and conditions of the sale must be within the contractual relation between the corporation and its creditors or shareholders."

In the *MacGinniss* case, the court found that a Montana mining corporation was not prohibited from acquiring and holding stock in another mining corporation, and that, accordingly, a foreign corporation might hold stock in a Montana corporation. It referred in the course of the opinion to a provision of the statute which authorized the consolidation of mining corporations "in such manner and upon such terms as may be agreed upon by their board of directors," and to another statute, then of recent date, by which corporations were authorized to exchange their property for stock of other corporations. After referring to the consolidation statute, the court said:

"If such corporations may consolidate in any manner and upon any terms without restriction, they may proceed by conveying all of their property to a corporation organized for that purpose, or by the purchase by one of the companies of stock of the others in whole or in part."

Apparently the court gave no particular consideration to the significance of the word "consolidate" as it appeared in the statute, and we are not prepared to say that such a transaction as it refers to might not be regarded as a consolidation within the meaning of the Montana act. It may be, and frequently is, given so general a significance as to embrace the case of the sale and transfer by one corporation

to another of all of the property of the former. In that case neither of the old corporations go out of existence and no new corporation is organized. This is not, however, the significance ordinarily given to the word "consolidate" in these statutes. The distinction between a sale of all corporate assets and a merger of two or more corporations is pointed out in

4 Clark & Marshall, 335.

4 Cook, sec. 897, page 3293.

Helliwell on Stock, 378.

Lee v. Atlantic, 150 Fed., 787.

4 Cook on Corporations, sec. 897, page 3298.

Noyes, 279.

Wm. B. Riker & Son Co. v. U. D. Co., 82 Atl., 930.

All of these authorities hold that as the term is ordinarily used in statutes it contemplates the passing out of existence of the old corporations and the organization of a new one, and that such a transaction as is here before the court is not to be regarded as a consolidation at all.

It is expressly stated by Cook that the Federal authorities are in conformity with this view, and he quotes from an opinion of this court to the effect that "a consolidation is not a sale." That the word "consolidation" is used in the Utah statute in its restricted, that is, its ordinary sense, is evident from the provisions of the statute in relation to the consolidation of railroad corporations, appearing at page 217 of the statutes of 1876 and from the provisions in relation to consolidations in the statutes of 1898, as amended by the act of 1905.

The transaction in question can in no manner be justified by the provision of the law of Utah in force at the time the Alice Company was organized permitting a consolidation of companies organized under its provisions and en-

gaged in the same character of business. However the right of one corporation in Montana to hold stock of another can be deduced from its consolidation statute, no such right flows from the Utah statute on the subject of consolidation.

The omission of the legislature of the State of Utah to empower mining corporations to hold stock in other corporations must be considered as a denial of such right. In the year 1905 the legislature of that State invested *irrigation* corporations with the power to hold stock in other companies. Section 57 of an act approved March 9, 1905, reads as follows:

"SEC. 57. *Stock May be Taken in Other Irrigation Companies.*—Any irrigation or reservoir company, incorporated and existing under the laws of this State, may purchase or subscribe for the capital stock of any other similar corporation, which, at the time of such purchase or subscription, shall be or is about to be incorporated; *provided*, that such purchase or subscription shall be made only when permitted by the original articles of incorporation or by amendment thereto proposed and adopted according to law, and such corporations are hereby permitted and authorized to amend their articles of incorporation so as to authorize such purchase or subscription."

The express grant of the right to irrigation companies clearly indicates that the legislature of Utah understood that without direct authorization irrigation companies would have no such power. It will be noted likewise, that irrigation companies were not generally clothed with authority to hold stock in other companies. They were not to be permitted to acquire property of that character unless the articles of incorporation expressly declared that they might. The articles of the Alice Company do not authorize it to become the holder of stock in another corporation, and it can engage in no business except that which is authorized

by its articles, as has been held by the Supreme Court of Utah in

Seeley v. Ass'n, 75 Pac., 367.

Here, likewise, the general rule is recognized, but it is asserted there are exceptions to the rule, and that the present case comes within the exception.

One exception to the rule is that where a debt is due to a corporation it may accept stock in payment for the debt or as collateral security. In *Bank of California v. Kennedy*, referred to above, the Supreme Court of the United States recognized this ruling. A national bank is forbidden to take security for any loans it may make on real property, but if it does make a loan, and afterwards its safety becomes doubtful, or the bank is unable immediately to collect, it may take security upon real estate or it may levy an execution upon real estate and sell the same for the satisfaction of the debt. But such conditions do not exist here, and they afford no warrant whatever for a voluntary exchange of the property of the company for stock in the Anaconda Company, nor do the authorities involving them afford any justification for the attempt on the part of the directors and a majority of the stockholders of this company to transform the Alice Mining Company from a mining corporation into a stockholding company.

It is said likewise in this connection that a corporation is entitled to take stock in another corporation for a temporary purpose. It may take it for the temporary purpose of utilizing it for the liquidation of a debt, as above indicated, but there is no rule supported by any reliable authority to the effect that it may take it for any and every purpose, provided that purpose be a temporary one. If the directors and a majority of the stockholders of the Alice Mining Company concluded to make a stock-jobbing company of the Alice Mining Company, all the stock it acquired

would be held for a merely temporary purpose. It would buy stock with a purpose not to hold it as a permanent investment, but in the expectation of selling it as speedily as possible, and yet it will scarcely be contended that the Alice Gold and Silver Mining Company would have any power either to acquire or hold stock for any such temporary purpose. But what is the temporary purpose for which it is said this stock was acquired? It was contended at the argument in this connection that it was taken as a step in the dissolution of the Alice Company, and with a view to the distribution of its assets among its stockholders, but an examination of the circular letter issued to the stockholders and the minutes of the proceedings of the stockholders' meeting discloses no intimation of even the remotest character of a purpose to effect a dissolution of the company, and it was not until a year after that any suggestion was made to the stockholders that a dissolution was contemplated. On the contrary, the original letter, on the faith of which it is to be presumed the stockholders acted when they authorized the sale, clearly carried an implication that the Anaconda stock was to be held as a permanent investment by the Alice Company, as it rather glowingly set forth the prospects before the Anaconda Company, allowing the inference to be drawn that the Alice Company would thereafter be the recipient of dividends of considerable amount which it would be in a situation to distribute among its stockholders.

The testimony of Mr. Kelley is, of course, quite direct, that the general plan of consolidation, subsequently including the Alice, was to cause the property of all of the companies to be transferred to the Anaconda and then to procure their dissolution. Although it was not so stated explicitly, perhaps, it is to be implied that the Anaconda stock received by each company was to be distributed among its stockholders, as it afterwards was, save that the present proceedings interfered with the distribution among the Alice

stockholders. In other words, it never was contemplated for a moment by any one that the 30,000 shares of Anaconda stock should be turned into cash, put up to the highest bidder and sold. No such plan was carried out and it would have been destructive of the whole policy under which the properties were handled to have followed any such course. The Alice was to be dealt with just as was any other subsidiary company. The Amalgamated officers never had any purpose to have the stock received by the Boston & Montana put up for sale at auction with the probability that actual investors would run the price up on them or get the control of the properties out of their hands, or that speculators would enter the contest and compel them to pay an exorbitant price for the outstanding stock. They could not afford to take any such chances and they never intended to take any such. They proposed to divide the Anaconda stock received for the Boston & Montana properties *in kind* among the holders of the B. & M. stock. Holding the control of that stock they would likewise hold control of the shares of Anaconda stock it was to distribute among its stockholders. And so with Alice. If the purpose was entertained to dissolve the Alice, it was a purpose to dissolve it upon the distribution in kind of its share of Anaconda stock among its stockholders, not upon the distribution among them of the money it should receive upon a sale of the Anaconda stock received for its properties.

It becomes necessary, accordingly, to find some authority that will justify a holding of stock acquired upon the sale of the property of a corporation, not to be turned into cash immediately for liquidation, but to be distributed in kind to the stockholders preparatory to dissolution. It is not claimed even that a stockholder can thus be forced to surrender his stock in one corporation and take in lieu of it stock in another corporation. The transaction is indefensible upon any theory of the law of corporations.

But was the stock acquired as a part of a plan of the Alice Company to convert its property and liquidate? That the managers of the Amalgamated Company may have entertained the general plan may be admitted; that there was acquiescence in this plan on the part of the directors of the Butte Coalition, who appeared never to entertain any contrary purpose, nor on the part of the Alice directors, who were mere dummies, may be true. The mere discussion of such a plan by Mr. Ryan or the announcement of his purpose to carry it out, he being at one and the same time a director of the Amalgamated, the Anaconda, the Butte Coalition and the Alice, would not make out such a purpose by Mr. Ryan *as a director of the Alice*. It is absurd to talk of Allen or Ferry entertaining any purpose at all. No one of the five directors of the Alice was the *bona fide* holder of any stock in it. They all held what stood in their names in trust for the Butte Coalition. The directors of that company may have entertained such a purpose. There is no pretense that the directors of the Alice, while acting as such, ever manifested or declared such a purpose. The nearest we get to it is that there was some discussion as to the power of the board of directors to sell all the property of the company.

Record, Vol. II, pages 858-859.

It is not suggested that this discussion—it had no necessary connection with dissolution or liquidation—occurred at a board meeting, and it is not even claimed that at any board meeting such an intention was either professed, declared or resolved. It is said that counsel for the Alice participated in the general plan, but the counsel named was a member of a law firm which for years had been the counsel of the Amalgamated Copper Company, the same gentleman who represented the Anaconda Company in the taking of the depositions in this cause in the East.

But let that go. Assume that at a meeting of the board of directors of the Alice Company—directors who had some personal interest in its affairs, not the mere representatives of the Butte Coalition Company, or the instruments of the Amalgamated—it had been resolved to make the transfer, acquire the Anaconda stock, make the distribution and dissolve. The directors of a corporation have no authority to do any of these things. It is not pretended that without the action of the stockholders they had the power even to sell—they sought explicit authority from the meeting of the stockholders. Their purpose to dissolve was equally nugatory unless shared by the stockholders. The latter were not asked for their views. Conceiving them, now, as a body, to have been capable of entertaining any views contrary to those of the Amalgamated managers, it is not improbable, at least not unthinkable, that they would have declined to sell if the proposition were submitted to them coupled with another to dissolve, or that if the two were submitted they would have approved the former and rejected the latter. It is readily conceivable that, reading the circular upon which their votes were asked in favor of selling, they were led by it to believe that the Anaconda stock would be a most valuable asset in the treasury of the Alice, yielding a revenue constantly and likely to increase in value by reason of the active development of the property it was to transfer with the other undeveloped mining claims to which the circular made reference. Indeed, it is respectfully submitted that the letter, adroitly and skillfully drawn as it was, was calculated to induce just such a belief. This means that at the time the sale was made, the directors of the Alice may have had a purpose to dissolve, rather the minds that wielded the greater organization behind it may have had such a purpose, but the Alice corporation, if one thinks of it as something separate and apart from Mr. Ryan and his associates in the larger corporation, had no such purpose.

Judge Bourquin felt impelled to reach the conclusion that the proposition submitted to and acted upon by the Alice and its stockholders was to take the Anaconda stock as a permanent investment. On that feature of the case he says:

"Now Alice had not capacity to acquire corporate stock save under exceptional circumstances—that disposition of its property was of urgent and immediate necessity, and that no cash purchaser was available or that by trade a substantially larger sum could be realized, or the like—absent here. It is of the contract between corporations and their stockholders that any sale of all corporate property to distribute proceeds to stockholders shall be for money, the ultimate measure of value. A stockholder is not bound to accept anything but money for his equitable share of corporate property nor bound to permit a sale to be made for other chattels or goods to be distributed. Although Alice directors personally contemplated some time dissolution of Alice and distribution of the Anaconda stock, not finding expression, in contemporaneous board action, it did not deprive the taking of the stock of the quality of a permanent investment."

Record, Vol. I, pages 186-187.

Even if the right to sell all of its property under the circumstances appearing could be justified, the Alice had no power to acquire or hold the stock of the Anaconda, and, accordingly, the sale was void.

IV. The Identity Between the Parties Effecting the Purchase and the Parties Accomplishing the Sale.

The deed sought to be annulled was executed by John D. Ryan, president and one of the directors of the Alice Company. He was, at the same time, one of the directors of the Anaconda Copper Mining Company, which purchased and had meanwhile become the President of the Amalgamated.

Not only was he a director of the purchasing company, but he was and for a long time had been the "managing director," becoming such, according to the testimony, about the year 1904. To all intents and purposes he was, likewise, the "managing director" of the selling company. The affairs of both companies in the city of Butte fell under his supervision. It is not in evidence that any other officer or director of either company gave any direction with reference to the business affairs of either at the time the transaction occurred resulting in the execution of the deed sought to be set aside.

This is not a case presenting the simple question of a sale from one corporation to another, the two having a common director. It embraces, indeed, such a condition, but that condition is relatively unimportant, and the cases which consider sales of that character are helpful, but they are weak, because of elements uniting with that feature in this case very much more perilous to the validity of the sale under consideration. To illustrate: Mr. Ryan is a member of the board of directors of the Chicago, Milwaukee & St. Paul Railway Company. It is likely to be a heavy purchaser of copper in the near future and may, probably will, buy from the Anaconda, of which he is a director. But it does not appear, and the fact probably is, that he exercises no such dominating influence over its affairs as he does over those of the Amalgamated or its subsidiaries. Neither that company nor the Anaconda appear to own any stock in the railroad company. There is not shown to be any intimate relationship in the management of their business. The manager of the railroad company, even its purchasing agent, could probably exercise his judgment in placing the order without dread of dismissal should the award be made to some copper company other than the Anaconda. I say perhaps he could. If the purchase were considered at a board meeting, it is not unlikely that some of the members, even

a majority, might not be the owners of any Amalgamated or Anaconda stock—men who are in a situation to exercise the unbiased business judgment which the immensity of the transaction required. If the sale were made and a court were called upon to pass judgment upon it, the rule of a common director would be applied. It would be applied in view of a multitude of instances which the history of corporations affords of frauds worked upon stockholders and the public in such sales.

The exposure of the transactions through which the Chicago & Alton was looted gave proof of the wisdom of the rule under which such sales are subjected to careful scrutiny by a court of equity.

It was with reference to such a case—that is a case of common directors, merely—that the Circuit Court of Appeals for the Ninth Circuit said in

Idaho-Oregon L. & P. Co. *v.* State Bank, 224
Fed., 39:

“Contracts made by directors who represent opposing interests, while not void *ab initio* are voidable in a proper proceeding taken for that purpose by the corporation, its shareholders or its creditors. 10 Cyc., 791. Richardson *v.* Green, 33 U. S., 30.”

We do not pause to inquire whether there be any essential difference on the point in question between that court and the Supreme Court of California in a late case,

Sausalito Bay L. Co. *v.* Sausalito Im. Co.,
136 Pac., 57-59,

in which that court quotes approvingly the following from O'Connor *v.* Coosa F. Co., 95 Ala., 617; 35 Am. St., 251, which it refers to as the “correct doctrine,” namely:

“If the same persons as directors of two different companies represent both companies in a transac-

tion in which their interests are opposed, such transaction may be avoided by either company, or at the instance of a stockholder in either company, without regard to the question of advantage or detriment to either company. Both the corporations are armed with the right to repudiate such a transaction, no matter how fair or open it may be shown to be. * * * The general rule is that such dealings are not absolutely void, but are voidable at the election of the respective corporations, or of the stockholders thereof. They become binding if acquiesced in by the corporations and their stockholders."

But when the one corporation actually owns a majority of the stock of the other corporation, so that it is bound and helpless, or it is equally so because the control is exercised even without the ownership of a majority of the stock, justice demands the application of another rule.

The writer is constrained to believe that the apparently irreconcilable differences in the statement of the rule applicable to the case of a sale from one corporation to another having a common director spring very largely from the degree to which control was exercised in each particular case. Cases can be found which, on the one hand, declare such a sale to be absolutely void, and on the other that the fact is a mere circumstance tending possibly to show fraud, but of itself of little consequence.

Authorities are not wanting that hold a transfer from one corporation to another, the two having a common director, as absolutely void. Such is the conclusion that must necessarily be drawn in such cases as

Munson v. Syracuse, 103 N. Y., 58.

Summers v. Glenwood, 86 N. W., 749.

Thomas v. Brownville, 2 Fed., 877.

On a proposition such as this, on which the authorities are in a state of the greatest confusion and in respect to

which there is much conflict that is irreconcilable, comparatively little aid can be given the court by reference to individual cases. It is believed that it will be more helpful to refer the court to what is said upon the subject in the modern text-books which have considered it. We quote the following from the second edition of Thompson:

"Contracts between corporations having a common directory are regarded by the courts very much with the same suspicion as contracts between individual directors and their corporations. Some courts have gone to the extent of holding that such contracts are *prima facie* fraudulent and void. But the more general as well as the more reasonable rule is that such contracts are not void but voidable. And the fairness of such contracts must be shown by clear and convincing proof, and it must be made to appear that they are absolutely free from fraud. Contracts between corporations having a common directorate are voidable, although there was a quorum in each board of directors who were not directors in the other.

* * * In England corporations having directors in common are prohibited from contracting, and such contracts are made void by statute, unless they are ratified by a vote of the stockholders. Under such statute it is held that a contract so made could be ratified, although the by-laws prohibited the directors from making contracts in which they were interested. In New Hampshire such contracts are held invalid on the ground that stockholders and creditors are entitled not only to the vote of a director in the board, but to his influence and argument in discussions. Dealings between corporations represented by the same persons as directors may be accepted as binding by each corporation and the stockholders thereof. The rule is that such dealings are not absolutely void, but rather voidable at the election of either corporation, or of the stockholders thereof; and they become binding if acquiesced in by the corporations. A contract between two corporations with

the same directors and principal officers will be presumed fraudulent as between them; but such presumption may be overcome by convincing proof that the transaction was fair."

II Thompson on Corporations, sec. 1242.

And the following from

10 Cyc., 791.

"c. Cannot Act for Corporation and for Opposing Interest.—Contracts made by directors who at the same time represent an opposing interest, generally where the other contracting party is a corporation in which they are also directors, are not void *ab initio*, but are voidable in a proper proceeding taken for that purpose, by the corporation, its shareholders, or its creditors."

After having canvassed the subject of a sale of corporate property made to a director and the principles applicable thereto, the author of the American and English Encyclopedia of Law, says:

"2. Contracts Between Corporations Having Common Directors or Members.—The principles above stated apply not only to the case of a director contracting with his own corporation, but also to that of directors of one corporation contracting with themselves as directors of another corporation."

21 Am. & Eng. Ency. of Law (2d ed.), 899.

Noyes on Intercorporate Relations, says, at section 114, that

"where the directors of the vendor corporation are substantially interested in the vendee corporation, a sale of corporate assets will be annulled if unfair, and the burden is upon the directors to show its fairness. And if the directors of the vendor corporation are likewise directors of the vendee corpora-

tion and thus control the action of both, the sale is voidable and will be set aside at the instance of a stockholder, regardless of its fairness."

It will be observed that when, in addition to the fact that the buying and selling corporation have a common director, it appears that the owners of a majority of the stock of one corporation acting through the directors thereof, or otherwise, are interested in the stock of the other corporation, or exercise a controlling influence over its affairs, the transaction becomes even more vulnerable. This branch of the subject is considered by Thompson in the section succeeding the one last above referred to. The discussion is introduced by the following:

"SEC. 1243. *Directors Contracting with Another Corporation in Which They Own Stock.*—Contracts of consolidation, lease or sale are frequently entered into between corporations where the directors of the one are largely interested in the stock of the other; or where one corporation owns a majority of the stock of the other contracting corporation; or where the stockholders of the two corporations are practically the same. Such contracts are governed by the same rules, substantially as those where directors deal with themselves, or with the corporation. They are not necessarily void, but if there is actual fraud or if any undue advantage is taken, or the contract is unfair, the courts will give relief at the instance of the injured party. Thus, where a majority of the directors were interested in a contract adversely to the stockholders of the other contracting corporation, the contract was held illegal, and the fact that the directors made the contract openly did not validate it. So, minority stockholders may have a lease canceled which is made by officers and owners of a majority of the stock to another corporation."

The court will observe that a case of that character is governed by the same rules as are applicable where the directors

deal with themselves personally—that is to say, where they buy from or sell to a corporation of which they are directors, not for another corporation, but for themselves personally. On principle, it is impossible to make any distinction between the case of a director of a corporation buying its property on his own account or buying it as the agent of an individual, or buying it as the director of a corporation, either as agent for some one else or as the director of a corporation. He is bound by his duty under the law to act with the same careful regard for the interest represented by him as he would were he acting for himself. It is conceded, of course, that authorities can be found asserting the proposition that a sale is not voidable when made by one corporation to another corporation having a common director, no other feature being involved. The case of *Smith v. Ferries* so holds and other California cases asserting the same doctrine, but it is impossible to reconcile the California cases upon this and related subjects. Authority can be found in the California reports for practically every gradation in view on this subject, from the idea that the transaction is absolutely void to the idea contended for by the defendant, namely, that the fact is a mere circumstance, and that the burden is upon the party attacking the transfer to show that it is in fact fraudulent.

It will not be necessary to go into the collateral questions involving the principles now being considered to show the conflicting authorities coming from California. The case of *San Diego v. San Diego*, 44 Cal., 106,

appears to be directly opposed on the very question being considered to the holding in *Smith v. Ferries*. That action was brought to have declared void a deed executed by the trustees of the city of San Diego to a corporation, of which one of the trustees was a stockholder and director. The court, having referred to the general principle "that no man

can faithfully serve two masters whose interests are or may be in conflict," and the application of it to the case of a sale by one to a corporation of which he is a director, continued:

"But it is claimed by the respondent that the rule does not apply in this case, because, the conveyance being to the railroad company, Sherman as a stockholder had only a remote or contingent interest in the land conveyed.

"While it is true that a corporation holds the legal title of the corporate property, it is equally true that it holds it for the benefit of its stockholders. In them is the beneficial interest. If it makes, it is their gain; and if it loses, they bear the loss. At common law, though not parties to the record, they could not be witnesses for the corporation, for in all matters in which it was concerned they were considered to have a direct, certain and vested interest.

1 Greenleaf on Ev., sec. 333.

"Men may, and often do, feel as deep a concern for the success of a corporation in which they are interested as for their own private affairs. To hold, therefore, that one intrusted with property in a fiduciary capacity may rightfully bargain in reference to it with a corporation in which he holds stock, would be to ignore all the evils which the rule in question was intended to prevent.

"But Sherman was more than a stockholder; he was a director of the corporation, also. As such he sustained the relation of a trustee to the stockholders, and it was his duty to use his best efforts to promote their and the corporation's interests."

That the same minds which in this case directed the submission of the proposition to sell directed, as well, the acceptance of the same by the stockholders' meeting is incontrovertible. D. Gay Stivers, one of the Butte attorneys of the Anaconda Company, went from there to Salt Lake to attend the meet-

ing. He, Mr. Ferry, one of the members of the law firm of Richards, Richards & Ferry, attorneys for the Alice; Mr. F. S. Richards, a member of the firm, and Willard Hamer, a clerk in their office, cast every vote recorded in favor of the resolution of sale. It is obvious that these gentlemen had instructions concerning what was expected at the meeting. None were conveyed by letter to the gentlemen residing at Salt Lake, and it is reasonable to assume, as Mr. Allen assumes, that Captain Stivers, one of the Anaconda attorneys, had oral instructions from Mr. Kelley, its chief counsel.

Various letters transmitting proxies to Ferry and telegrams concerning same give no directions as to how he was to vote them.

Record, Vol. II, pages 657-665.

Ferry reported to Allen that the business of the meeting had been transacted "according to the plan outlined."

Record, Vol. II, page 656.

Nor is it possible to obscure the guiding hand, the controlling influence of the Amalgamated officers, in this transaction behind the ownership of the majority of the stock of the Alice by the Butte Coalition. It is unnecessary to review the facts disclosed by the evidence of the identity of the governing minds whose will was reflected in the acts of this company and those the majority of whose stock was owned by the Amalgamated.

When the plan was formed to consolidate all the subsidiary companies of that combination, the Butte Coalition and the Red Metals, whose stock the former owned, were included as a matter of course. In the execution of the plan it was found necessary to embrace the Alice because its stock was held by the Butte Coalition, but the latter was regarded in the original plan exactly as was the Anaconda or the

Boston & Montana or the Parrot. There never was any doubt, apparently, upon the part of those who conceived or carried out the plan to unite the title to all the properties of these companies in the Anaconda, that the Red Metals or the Butte Coalition ought to be included or that there lurked here any special danger to the success of the plan. That plan did not contemplate the acquisition of new properties not theretofore controlled by the Amalgamated; it embraced only those which could be spoken of as Amalgamated properties—in which the influence of that organization was dominant. Furthermore, the circumstances attending the birth of the Red Metals and the Butte Coalition forbid us to believe that it was not controlled by Amalgamated influences in its infancy, and every fact developed tends to confirm the presumption of the continuance of the relationship which came into existence on its organization.

The Red Metals took the Heinze properties on the settlement of the bitter, protracted, and expensive litigation which had been waged. All the negotiations for that settlement were carried on by Ryan, on the part of the Amalgamated. He and Cole were at the time associated in many business enterprises, chiefly mining. Cole took an assignment of all the claims of Heinze against the Amalgamated and released them all in consideration of the release by the Amalgamated of all claims against Heinze and his companies. It may be true that the public being informed that a settlement had been or was to be effected and that the Butte Coalition was to hold the stock of the Red Metals, to whom the Heinze properties were to be transferred, eagerly subscribed for the stock, so that the Amalgamated was not even called upon to put up any money to acquire the properties. But the stock was subscribed for thus eagerly only because it was and must have been understood that the company was to be another subsidiary, as it was. The stock must have been underwritten, in effect, if not in form, by the

Amalgamated. It was agreed that Heinze was to get \$10,500,000. If the amount had not been forthcoming from subscriptions for Butte Coalition, the Amalgamated was bound to take enough to make up that figure. It is of no consequence that it actually became the owner eventually of but 50,000 of the 1,000,000 shares. The company was organized by its officers and others in most friendly relations with them. It could not afford to have it otherwise. Of what avail would it be to have reached a settlement if the properties should pass to a company in which its voice was not potent? No one ever charged the gentlemen who have directed the business affairs of the Amalgamated with a want of ordinary business sagacity. It might as well have left the properties with the Heinze companies as to have procured them to be transferred to a company in which it had no controlling voice. Its officers became stockholders in the Butte Coalition, Mr. Ryan, himself, Mr. Rogers, Mr. Rockefeller, and Mr. Addicks.

Record, Vol. I, page 427.

In fact, the 50,000 shares which the Amalgamated acquired came from the generous store of Mr. Rogers, who, because of some consideration dating back to the time of the organization of the company, when it had an "option" to take some Butte Coalition stock, let the company have a bagatelle of a million's worth, practically, at \$16.50, when it was selling at \$31 and \$32. This "option," which would have been a most interesting contribution to the history of this transaction, could not be produced.

Besides the officers of the Amalgamated many of its employees took stock in the Butte Coalition. It was not without reason that the former said in its annual report for 1906 that parties "friendly" to the Amalgamated had acquired the Heinze properties,

Record, Vol. II, page 590;

that they had been transferred to the Red Metals Company, whose stock was held by the Butte Coalition "controlled by the same *friendly parties*" (*Id.*) So friendly were they that despite the furious controversies of the past the same attorneys thereafter handled the business of the Red Metals Company and all the other Amalgamated companies. With the stock owned by the principal officers of the Amalgamated, its own holdings and such as it could control in consequence of proxies sent on blanks which went to every stockholder with notice of a meeting, there never was a time when it did not control the Butte Coalition. Control through proxies is now well understood. The officers of successfully conducted mutual life insurance companies perpetuate themselves in office in that way. The American Tobacco Company actually owned but a very small percentage of the stock of many of its subsidiary corporations, and the same conditions existed in the case of a number of those controlled by the Standard Oil. A list is given in each case with the opinion of this Court.

It is asserted in

Hyams v. Calumet & Hecla, 221 Fed., 513-541,

that control by proxies of one company selling to another, presents a case, so far as the validity of the sale is concerned, that differs in no essential particular from control by stock ownership. The case last referred to is interesting. It involves a consolidation of the Michigan copper companies. Liberal Michigan statutes touching the ownership of stock in one corporation by another saved the consolidation in its initial stages.

Bigelow v. Calumet & Hecla, 155 Fed., 869; S. C. 167 Fed., 704.

But when the plan to arrest which the suit, resulting as in the opinions cited, was begun, was carried out and its opera-

tion observed, the court came to the conclusion, perhaps because there is less tolerance than formerly of such combinations, that it is illegal.

The consolidation was condemned because, as the court expressed it, "The Calumet & Hecla was, in the transaction in question, both buyer and seller."

Hyams v. Calumet & Hecla, 221 Fed., 542.

The rights of the parties to this litigation are to be determined just as though the Amalgamated or the Anaconda owned a majority of the stock of the Alice instead of such ownership being in the Butte Coalition. No one can doubt that the difficulties in the way of the carrying out of the general plan of consolidation were heightened in no material degree, because either of the two companies first named did not own a majority of the Alice stock. The real power which put through the transfer was the same as though one of them was the majority holder of the Alice stock.

But whatever view may be taken of the relationship between the Alice and the Amalgamated or the Anaconda, the connection of Mr. Ryan with both of the corporations, the purchaser and the seller, requires that the sale must be characterized by *uberima fides* or it cannot be sustained.

(a.) It must appear that it was wise to sell and that some condition had arisen such as would prompt a sale had the property been owned by a company under no compulsion to sell, nor subject to the dominating influence of the buyer.

(b.) It must appear that all information in the possession of the purchaser affecting the value of the property was given to the vendor.

(c.) It must appear that the consideration was altogether adequate.

(a.) Mr. Corry and Dr. Weed both declare, what is obvious, that it was unwise on the part of the Alice to sell—if one may speak of the Alice as having sold.

It is of no consequence whatever that it should appear that a piece of mining property was sold for the price it would bring in the market; a preliminary question is to be determined, and that is the necessity to make a sale at all. It is a perfectly well-known fact that mining property, valuable only because of ore which may be found within it at great depth, is exceedingly unsalable property, at any figure approaching its real value. Few people buy property of that character in the expectation of selling it again. Those who acquire an interest in it acquire it ordinarily in the expectation that some arrangement will be made for the operation of the property and the extraction of the values within it and they expect in that way to realize many times the amount that could be realized for it upon a sale for cash. Now what reason was there that ought to impel the stockholders of the Alice Gold & Silver Mining Company to sell their property to the Anaconda Copper Mining Company? It is true the property had not been profitably worked for a number of years, but it is likewise true, and it is idle to attempt to conceal the fact, that it lies within what has been considered, until very recent years, exclusively a silver district. It had ceased to be profitable to work it as a silver mine. Some effort had been made to determine whether the zinc ores could not be mined at a profit. The result of the tests is before the court in a very general kind of way. But let it be assumed that, in the present state of the metallurgical art, the ores were shown to be too refractory for successful treatment. Progress along these lines has not reached its limit, however, and it is a mere matter of time when these ores will be immensely valuable. And it is equally idle to attempt to obscure or conceal the fact that the copper producing area of the Butte camp is yearly being extended

into and beyond the region of the properties of the Alice Company. Experts of the highest character declared it altogether improbable, not to say impossible, that copper should be found in the properties of the Butte-Superior at the eastern extremity of the Rainbow lode which traverses these properties. It is producing copper in very considerable quantities today, and the corporation is operating most successfully. Between them and the properties in question lie Senator Clark's Elm Orlu and Poser. The former, at least, produces copper of the very highest character. The same Rainbow lode which gives value to the claims last named traverses the Alice properties itself, and is cut by the Jessie vein, one of the enormous producers of the Butte camp. Its productive character and capacity have been demonstrated only with recent years, and in the last few years the Badger State has developed into one of the phenomenal producers of the camp.

Why should this property be sold to the Anaconda Company now? Certainly within the last four years, in view of the developments referred to, its prospects as a producer of copper are no less alluring than they have been for ten years and they are unquestionably more promising now than they have been at any time since the Butte Coalition Company acquired a majority of the stock of the company. The Anaconda Copper Mining Company and its engineers certainly anticipate that this property is going to return them the price they paid for it, or they never would have paid it. No reason is suggested why they should have it, why they should want it, except that they expect to realize at least what they paid for it. Now why was the sale of the property made, considering the interests of the Alice stockholders? Was there any clamoring for a sale of the property on the part of any of them outside of the interests associated with the Amalgamated Copper Company, which, apparently, desired the property transferred to the Anaconda Mining Company?

But if, upon a consideration of all of the circumstances and conditions in which the property seemed to be placed, an independent owner of the property would feel that he ought to make a sale of it, what would he do? He would unquestionably employ some high class, competent mining engineer, whom he would fully assure himself beforehand had no relations whatever with the Anaconda Copper Mining Company, or any of its associated companies that would in any manner influence or bias his judgment. He would procure him to make an examination of all of the conditions. He would ask him to take into consideration all he could learn concerning the extension of the copper producing district into the neighborhood of the claims and the prospects, if any there were, arising from the recent production of copper, both from the Jessie vein and the Rainbow lode, and he would take the advice of such an engineer as to the fairness of the price offered by the Anaconda Copper Mining Company. Then any ordinarily prudent and sagacious owner of such a piece of property would, as a matter of course, make the most diligent effort to find some other party who might desire to purchase the property, with a view to determining whether better terms could not be obtained. The testimony in this case is that practically any property in that region could have been "floated," as the expression is, in what are spoken of as the "boom times" from 1904 to 1907. Those times will come again if they are not now here. Those were boom times, because copper was commanding from twenty to twenty-five cents per pound. With the extraordinary prices now prevailing, there should be no difficulty whatever in finding some one who would be glad to take the property on the usual bonding terms, agreeing to expend large sums of money in the exploitation of the property. It is not in evidence that the stockholders of this company were ever asked even to give a bond on the prop-

erty, even in the boom times, with a view to the disposition of the same to their advantage. The stock of the company during that time was selling on the open market for from eight to nine dollars per share. The company had accumulated an indebtedness of \$34,000 after a period of practical idleness for twelve or thirteen years, but in view of the value which the property is conceded to have — upwards of a million of dollars — that must be regarded as a mere trifle. It could have been easily adjusted. In fact, there is no pretense that the Butte Coalition Company was demanding satisfaction of the indebtedness due it, or that it was not perfectly willing to carry the obligation upon the ample security of the properties of the company. There was no justification for the sale. It was made because, in the pursuit of the purposes for which it was organized, the Amalgamated Copper Company wanted it. No effort was made to find another purchaser, because that would interfere with its purposes.

Again, if the price paid, practically a cash price, was adequate, as a cash price, it is to be borne in mind that mining property ordinarily brings so little on a cash sale that it is disposed of, as a rule, under lease and bond. In all probability the stockholders of the Alice, if it could be conceived that they were at liberty to act freely in accordance with an untrammelled judgment as to what was to their best interest, as such, would have preferred to contract in the usual way for the sale of the property at a figure considerably in advance of what it would fairly bring for cash.

The sale was not moved by any consideration of what was for the best interests of the stockholders of the Alice. It came about because the Amalgamated wanted the property—wanted to have the title in the Anaconda. It fixed a price on the property and the regular procedure followed in the case of all of its subsidiaries was pursued.

b. While in cases of a purchase by one corporation of another having a common director the authorities lay special stress upon the necessity of a full disclosure, it is obvious that, under the conditions that obtained, the result would have been no different, however complete had been the exposition of the facts touching the value and prospects of the property of which Mr. Ryan and the purchasing companies had knowledge. They had the votes to put the plan through, and there was no one to whom the information could be given save to a helpless minority. It was impossible to lay the truth before any stockholders of the Alice so as to inform their judgment. The condition emphasizes the impossibility of upholding this sale as against the dissenting stockholders. However, the obligation rests upon a purchaser situated as is the Anaconda or the Amalgamated to make full disclosure of all facts of which it has knowledge likely to affect the value of the property. Can any one believe that the Alice stockholders were as well informed or could be as well informed concerning the property and the conditions which affected its value as was Mr. Ryan, and through him the companies, in the direction of whose activities he was so potent a factor, if, indeed, he did not absolutely direct them? He had an opportunity to know, as perhaps no other man knew, about the entire Butte field. It is idle to assert that the value of the Alice property was not vitally affected by the success or the want of success which attended the explorations and operations in the Badger State. Ryan knew in detail about them. The Alice stockholders, save those in his confidence, could only guess at what was going on, and, of course, had no means of knowing of the showing that was followed by a production of 1,310,431 pounds of copper in 1910, 6,079,005 in 1911, 10,135,197 in 1912, with 80,149 ounces of silver in 1910, 411,367 in 1911, and 687,308 in 1912.

In 1911 the Amalgamated was able to say in its annual

report that "There is a general opinion among those familiar with this property and its development that it is destined to become one of the great mines of the district." In 1912 it reported "very gratifying results" from development work done on the 1100, 1300, 1400, 1600, and 1800 levels. The results were indeed so gratifying that the stockholders were advised that during 1913 it was proposed to sink a shaft on the Moose to a depth of 1800 feet "to prospect the veins at greater depth" than they had been tried out by the old shallow workings on that claim, which is a very small one abutting the Alice property.

Despite the plain purpose indicated in the report to prospect the veins in the neighborhood of the shaft so to be sunk, an effort was made at the trial to impress upon the court the view that it was being sunk primarily for ventilation. The report refers to the fact that it will be convenient in connection with the ventilation of the Badger State, but the primary purpose is not to be doubted.

The vast promise held out by the great Jessie vein so far to the northwest was preserved a secret from the dissenting Alice stockholders.

The Amalgamated people knew practically as much about the developments in the Butte Superior and Senator Clark's properties as of their own. The Alice stockholders were not on the same footing at all as to information relating to the value of the properties in question. The Amalgamated sent out Herman Keller, Frank Klepetko and Professor Kemp of Columbia University to value the properties going into the consolidation, and though they were sent for that express purpose the Alice stockholders were not apprised as to any judgment these gentlemen expressed concerning the property. The court is told that Professor Kemp made a trip to Butte to examine these properties to aid in placing a valuation upon them so that the proportion of Anaconda stock each received should be ratable and the total just. There

is no report from him or his associates available—at least none touching the Alice.

c. Value.—A prominence has been given to the subject of value in the consideration that was accorded to this case in the district court quite disproportionate to its importance. If the conclusion should be reached that the majority stockholders had the power to dispose of all the property of the Alice in bulk and that they had the right to take Anaconda stock in exchange, and that either there is no offense against the Sherman act in the transaction, or that minority stockholders cannot be heard to complain on that score, and that the sale is not voidable at the election of any of them because of the control which the Anaconda, the buyer, exercised over the Alice, the seller, and of the other circumstances attending it, including the want of any showing whatever as to why, considering the interests of the Alice stockholders, any sale at all should be made, but is voidable only for inadequacy of the consideration, the question of value becomes one of first importance. It was, perhaps, magnified until the other important questions of law and fact presented by the record were lost sight of.

It is unnecessary to review at length the testimony on value. The burden is on the appellants, as all the judges called upon to pass upon the evidence held, to show that the price paid was all the property was worth.

In his opinion herein Judge Hunt says:

“It seems clear that considering all the interrelated associations of the corporations heretofore referred to and of the directorships of Mr. Ryan in the several companies, minority shareholders have a right to call upon the courts to require the purchasing company through those of its directors who were also interested in the selling company, to disclose everything which they knew concerning the value of the Alice, the sources of such knowledge, the reasons for

the sale, and the fairness thereof. Thus it devolves upon Mr. Ryan to show that all knowledge which as a director of the Anaconda he obtained concerning the Alice properties was given to the directors and shareholders of the Alice Company."

Record, Vol. I, pages 173-174.

Judge Bourquin said:

"An arbitrary price is *prima facie* unreasonable, and, when assailed as unfair under circumstances like those involved, who defends it as reasonable must prove it.

"Because of common directors, the learned judge who granted the injunction held the burden was on defendants to clearly demonstrate the sale was fair, and the case was tried on that theory. This burden has not been sustained. It is not clear the price paid was substantially adequate, and so the court finds it was not.

"It is impossible to reconcile the cases upon the law of common directors.

"See

Cooke, Corporations, sec. 658, *et seq.*

Thompson, Corporations, secs. 1242, 1243.

Thomas v. Ry. Co., 109 U. S., 522.

Leavenworth v. Ry. Co., 134 U. S., 689.

"The rule is a good one and general that wherever fiduciary relations exist and in discharge of duty there is conflict of interest, if the transaction is not void, as it often is, it is open to impeachment by the beneficiary, will be closely scrutinized by the court, and if the trustee does not make manifest its fairness, it may be set aside or other relief granted. Corporate transactions like this at bar ought to be subject to this rule. That the common directors were not a majority of either board is a difference in degree; but not in principle. They may have dominated the board. In both cases is divided duty, conflicting

interest, possible impaired judgment of unknown effect, difficult of proof and danger to stockholders."

Record, Vol. I, pages 183-184.

It is clear that those who controlled the Anaconda wanted the property, and that they fixed the price that was to be paid for it. It is not in accordance with the experience of mankind to find full value paid under such conditions. Who says the price paid was adequate? The writer entertains a very high regard for Mr. Gillie and the other employees of the appellees whose testimony bore more or less directly on the question of value, but might not the court reasonably expect that some one other than a servant of the Anaconda Company would be called on that important issue? The court cannot fail to be impressed with the fact that neither Mr. Goodale nor Mr. Sales was asked his opinion as to the value of the property. Even Mr. Gillie did not venture an opinion as to its market value, and Mr. Ryan simply declares that he thought "it was a very good trade" for the Alice stockholders.

Record, Vol. I, page 400.

Has the testimony of Mr. Corry and of Dr. Weed, who fix the value of the property at \$3,000,000, been overcome? That enormous values are bound up in the zinc ores known to be in the mines is indisputable. The metallurgical problem is a difficult one, but not baffling when one reflects on the time, money and scientific research spent by the Butte Superior and by Senator Clark to develop an economical method, each for treating the ores from their properties, respectively. It must be admitted that the Ryan interests never tried to do anything with the Alice ores. It does not appear that they ever spent a dollar to test them out.

It was a cautiously framed question that was put to Mr. Bruce to develop the testimony that there is not at the pres-

ent time any known process by which the Alice ore can be profitably worked for zinc. But Mr. Bruce tells that in 1906 there was no process known by which the Butte Superior ores could be worked, and that there has been great development since that time in the treatment of zinc ores. He expresses no despair at all about the future of the Alice ores.

It appears that a number of new processes have recently been put in operation and it seems likely that in view of the alluring chances held out in the abundance of refractory ores, the metallurgists of the world will be wrestling with the problem of their reduction.

Moreover, it would be surprising if some of the rich copper veins coming from the southeast, shown to extend into the very region of the Alice properties, did not penetrate them. The Edith May has not been a bad second to the Jessie as a producer. The testimony above adverted to shows that the latter was barren for a long distance on the 1200 after it entered the Badger State, and yet showed wonderful richness in the lower levels. It is in evidence that the northwest series is capricious at best in character, both on the strike and on the dip. There is no reason to despair of finding copper ore in the Rainbow lode at depth. That the sources of that metal were opened by it is shown by the rich ores yielded by the Elm Orlu. More or less is encountered in the Butte Superior.

V. The Federal Statue.

Notwithstanding all three of the judges of the Circuit Court of Appeals concurred in the conclusion that the contention that the transaction under investigation is in violation of the Sherman law can not be made in this suit—that only the Government can be heard to complain on that ground in an action expressly authorized by the statute—the appellants venture to present the contrary view.

With the utmost respect for the learning and judgment of the distinguished judges announcing that doctrine, it is submitted that it is not and can not be sound. Plainly stated it is this: I am a stockholder in a prosperous going concern. It has a business built up by years of square dealing, aggressive and sagacious, yet conservative management. It pays me very satisfactory dividends upon my investment. They come regularly, not so large as something more speculative in character might return, but quite enough to meet my expectations. The majority of the stock, or say two-thirds of it, for that matter, falls into the hands of directors who are proceeding to put the company into a combination plainly forbidden by the Sherman law, or despite my protests have done so. The law officer of the Government may or may not move in the premises. If he should begin dissolution proceedings it may be years before a final decree is entered. Then the attempt to "unscramble" is made. Meanwhile the property of my company has been absorbed by the combination. Its identity is lost. Its agencies are dissipated, the trade of its customers diverted. Its good-will is gone.

I am powerless to prevent so great a wrong from which I suffer an injury quite apart from that resulting to the public generally, and the courts are impotent to protect me, it is said. The writer will refuse to believe it until this court says that such is the law.

The *Calumet & Hecla Case*, 155 Fed., 876, is a direct authority to the contrary, but none would seem to be necessary. There is a want of power on the part of either the directors or the majority of the stockholders to make a conveyance denounced by the Federal law, whatever the local statute may say.

Union Pacific Case, 226 U. S., 86.

The court in the suit of a private party does not undertake to dissolve the offending combination or administer

upon its property. It simply gives the peculiar relief to which the complainant is entitled.

The case of

Frank v. U. P. R. R. Co. and St. Joseph & G.
I. Ry. Co., 226 Fed., 906,

was, like this, a case brought by a stockholder who founded his action on a claim that the directors had violated the trust reposed in them by entering into a combination in violation of the Sherman act. On that point the court said:

"Where a violation of the Sherman act exists, such as is shown in this case, the minority stockholders may maintain a suit in equity to enjoin the special injury to their interest resulting from the acts in defiance of that statute, and need not await action on behalf of the United States seeking a dissolution of the wrongful ownership."

The same conclusion was reached in

De Koven v. L., S. & M. S. Ry. Co., 216 Fed.,
955-957.

The authorities holding that a private party who connects himself in no way, who shows no property right in either of two corporations entering into a combination, cannot be heard to attack a transaction as being in violation of the Sherman law, are, of course, not in point.

The case of

Paine Lumber Co. v. Neal, 244 U. S., 459,
was such a case. It did not determine the question here presented, but held merely that "a private person can not maintain a suit for an injunction under Section 4 of the act." This suit, it need scarcely be said, is not brought under Section 4. It is an appeal to the general equity jurisdiction of the court to arrest a disposition of the corporate property which is forbidden by the law.

The case of

MacGinniss v. B. & M. Co., 29 Mont., 428, proceeded upon the principle invoked. The right of the stockholder to bring the action was vindicated by the court in its opinion. It is not to be regarded as any precedent on the merits of this case, however. The statute there considered denounced combinations entered into *for the purpose of fixing the price or regulating production.*

29 Mont., 452.

Testimony was given in that case that, notwithstanding the acquisition of a majority of the stock of the B. & M., the Amalgamated had never exercised or attempted to exercise any control over its affairs. Against this were the reasonable probabilities of the case. But the court held that the mere possession of the power to regulate competition or fix prices would not make the combination amenable to the law. It is enough to say that this court has repeatedly held, as heretofore pointed out, that under the Federal act it is sufficient that the combination has such power, whether it exercises it or not. Its latest declaration is found in the opinion in

International Harvester Co., v. Missouri, 234 U. S., 199.

The essential difference between the statute of Montana as construed by the Supreme Court thereof and the Federal statute is expressed in the following:

"The preventing of the engrossment of trade is as definitely the object of the law as is price regulation of commodities, its prohibition being against combinations 'made with a view to lessen, or which tend to lessen, lawful trade or full and free competition in the importation, transportation, manufacture or sale of any commodity or article or thing brought or sold.' See *Standard Oil Co. v. United States*, 221 U. S., 1; *United States v. American Tobacco Co.*, *Id.*, 106; *United States v. Patten*, 226 U. S., 525."

Though the statute referred to was that of the State of Missouri, its identity, in the particular pointed out with the Federal law, is assumed, if not declared. The same idea is conveyed by the following from page 209.

"It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect. *Armour Packing Co. v. United States*, 209 U. S., 56, 62; *Standard Sanitary Mfg. Co. v. United States*, 226 U. S., 20, 49. The purpose of such statutes is to secure competition and preclude combinations which tend to defeat it."

If a combination "tends" to defeat competition, it is unlawful. Such is the character of the combination which has been the subject of this study.

It is elementary that a conveyance forbidden by a statute is void.

The Civil Code of Montana provides :

"That is not lawful which is :

1. Contrary to an express provision of law.
2. Contrary to the policy of express law, though not expressly prohibited ; or,
3. Otherwise contrary to good morals."

Sec. 5051.

And equally fundamental is it that a stockholder may complain of a disposition of the property of a corporation which the law forbids.

The learned judge who wrote the principal opinion of the Circuit Court of Appeals believed there is evidence in the statute that Congress intended that a contract or transfer, coming within the inhibition of the statute, should be void only as against the Government, but valid as to every one

else. In other words, he conceived that the statute, by authorizing the institution of suits for dissolution by the Attorney General and actions for treble damages by any one injured, intended that only such actions could be maintained, in the event of a violation of the law.

It is difficult to conceive why Congress should desire to relieve an offending corporation or offending directors from responsibility to a stockholder, and it is submitted that the fact that it authorized specific actions to be maintained can not be considered as evidencing a purpose that the ordinary consequences should not flow from its declaration that contracts denounced should be "illegal."

The Circuit Court of Appeals referred to the case of *Wilder Mfg. Co. v. Corn Products Refining Co.*, 236 U. S., 165, as supporting the view it took of this feature of the case. But it plainly does not hold that a protesting stockholder may not be heard to complain, not of a contract entered into by the forbidden combination in the pursuit of its business—in a just sense a contract collateral to the transaction by which the combination comes into being or expands—but a contract executed or executory through which the corporation in which he is interested is or is to be absorbed by the "trust."

In the case referred to the party complaining had entered into a contract with the corporation whose organization was assailed as violative of the Sherman act. This will plainly appear from the opening paragraph of the opinion, here quoted:

"We refer to the parties, the one as the Manufacturing, and the other as the Refining Company. Sued by the Refining Company in April, 1909, to recover the amount of the price of two lots of glucose or corn syrup, which it had bought in January, 1909, and which it had consumed and not paid for, the Manufacturing

Company asserted its non-liability on the following grounds which we summarize."

The principle upon which the case turned is announced in the second paragraph of the syllabus as follows:

"The general rule is that one who has dealt with a corporation as an existing concern having capacity to sell, cannot assert, or escape liability, on the ground that such concern has no legal existence because it is an unlawful combination in violation of the Anti-Trust Act. Such a defense is a mere collateral attack on the organization of the corporation which cannot lawfully be made. *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540."

It but repeats the doctrine announced in the case referred to, namely, that one who has made a contract with a corporation, can not escape the obligation into which he entered by asserting that the other party to the contract came into being in violation of the Sherman law. That rule is the rule of plain, common honesty, of elemental morals.

In each of the cases last above referred to the party complaining had purchased merchandise of the corporation whose organization was assailed as violative of the anti-trust act. The court properly held that the contract sued on was collateral, that having dealt with the corporation and secured from it the goods sued for the purchase, was estopped to question the validity of its organization.

The learned judge who spoke for the Circuit Court of Appeals on this point recognized that the contention held untenable in *Wilder Mfg. v. Corn Products Refining Co.*, was advanced by one who was a party to the very contract under investigation, but he asserted that in his view the stockholder of a corporation entering into a contract with the company said to exist illegally was equally disabled. Perhaps he would be as to any contract collateral in character,

as if the corporation in which he held stock should purchase goods of the corporation whose organization is challenged.

But why should he be when he seeks to arrest or set aside proceedings for the absorption of the property of the corporation in which he is interested, the very thing the statute forbids? No rule of estoppel can be invoked against him. The appellants appeared at the meeting of the stockholders called to authorize the transfer here challenged and protested against it. They never recognized the transaction as theirs. They never sought to secure any benefits from it. With deference it is respectfully submitted that there is a radical difference, a vital difference, between the position of one who has entered into a contract with a corporation said to exist in violation of the Federal statute and a protesting stockholder of a corporation it has absorbed in the carrying out of a purpose to monopolize trade or effect a combination in restraint of trade.

Everything said by the court in the opinion in *Wilder v. Corn Products Refining Co.* must be considered in connection with the all-important fact above referred to. It is perfectly evident that the court did not have in mind in anything said by it a suit by a stockholder who is seeking to save his corporation from being drawn into an unlawful combination.

Some argument was made in the lower court to the effect that while a stockholder might arrest a transfer of the property of a corporation, if he moved before it became effective, equity could give him no relief if the conveyance had already been made—in other words, that a stockholder may enjoin a sale, being *ultra vires*, but that he cannot have it annulled. The doctrine thus announced is appealed to as against the claim of the appellants last argued; perhaps as against all the grounds urged by them as a basis of relief. It does not seem necessary to dwell upon this contention. What is a stockholder to do when the officers of a corpora-

tion fraudulently or *ultra vires* convey away its property before he knows anything about the purpose to do so? What is he to do when they exchange it for other property through the ownership of which the corporation is embarked in a business foreign to that for which it is created?

It is said that equity is a race between the rogue and the chancellor. Here is a case, according to appellees, in which the chancellor confesses himself beaten in a real race.

Certainly a transfer or a purchase tainted with fraud on the stockholder, either actual or constructive, is not immune from attack by him. Nor is one that is *ultra vires*. The principle to which appeal is made has no proper application. A corporation may be barred either by estoppel or acquiescence, or by virtue of the principle that equity will not interfere to annul a deed made in the course of an unlawful transaction in the prosecution of which both parties were equally guilty. The maxim applicable is trite. But it has not been applied with the same rigor by the Supreme Court of the United States as by some State courts.

Central T. Co. v. Pullman's P. C. Co., 134 U. S.,
24.

So a stockholder may be estopped. One may become estopped from asserting that a deed is a forgery. But unless he is barred by acquiescence a stockholder may have rescission as freely as he may have injunction. How can he be charged with being *particeps* when he protests against a sale and it is made in spite of his resistance?

The foundation of the rule that a corporation may not itself maintain a suit to annul a deed made by it *ultra vires* is pointed out in

Long v. G. P. Ry. Co., 24 Am. St., 931.

"Stockholders may in equity sometimes set aside *ultra vires* acts done by a corporation, which the corporation itself may not take advantage of."

Wis., etc., v. Green, etc., 109 Am. St., 381-395.

Relief appropriate to the case is granted,
X Cyc., 990,

including cancellation.

X Cyc., 992.

Rescission is an appropriate action against corporate directors charged with *ultra vires* acts.

III Pomeroy's Equity, 1693 (2d ed.).

We proceed to a consideration of the law and the facts concerning the appellants' contention that the transfer assailed was made in violation of the Anti-trust act.

The Sherman act provides :

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

"Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, or, on conviction thereof, shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The law was aimed at the consolidation of business organizations, as a result of which a whole flood of public evils ensued, prominent among which was the suppression of competition and the ultimate establishment of a monopoly more or less complete. It will be noticed that section 1 denounces combinations in restraint of trade whether a monopoly is established or not; that section 2 condemns monopolies accomplished or attempted, whether there is a combination or not. It recognizes that a single individual may organize a monopoly, as if one should attempt in these times to "corner" all the grain of the country. Section 1 is aimed at combinations, the purpose of which is the absorption of rival businesses which would otherwise compete with each other, or that has for its object any other interruption of the free course of trade as it has been pursued. It was enacted to suppress the "trusts" and has come to be popularly known as the Anti-Trust Law.

In his work on Concentration and Control, President Van Hise refers to the pooling agreements of the eighties and of the causes which led to their abandonment. He then (page 69 *et seq.*) traces the various steps in the process of consolidation through the series of trusts, holding companies and complete merger. The discussion is so pertinent to the present inquiry that, lest the book may not be readily available to the court, his comments are inserted here.

"(3.) *Trusts*.—Since the pool was a failure, in order to attain the objects striven for by it, the trust was devised. Under the trust, each unit of the combination transferred its stock to trustees. Thus the entire stock of the constituent companies was held by a group of trustees who had complete authority over the business of all the companies entering into the trust. An establishment or company retained its own officers and conducted its business, but under the direction of the trustees, as to line of product, amount of output, and price. The trust was able to prevent overbuilding

and overproduction, to prevent competition in price between its units, to apportion business, to consolidate buying and selling, and thus gave all the advantages of unity of organization, as described, pp. 8-20, due to concentration of industry. Well-known types of this organization were the Standard Oil trust, the sugar trust, the cotton-seed oil trust, the whiskey trust. The great period of the trust was from 1888 to 1897.

"If the pool was a partnership of corporations, it was even more clear that the board of trustees controlling the business of a number of corporations through their trust certificates was such a partnership. In consequence of this, in the late eighties trusts were declared to be illegal, and this led in the early nineties to the next stage of combination.

"(4.) *Holding Corporations.* — Under the trust each of the constituent companies was an independent legal entity. The stock was simply placed in the hands of the trustee for management. In the holding corporation, the stock is transferred to the holding concern, so that this corporation actually owns the stock of the constituent companies. So far as management and operation are concerned, the situation is precisely the same as under the trust, and the advantages the same, only the constituent companies are subsidiary companies instead of nominally independent. The subsidiary company maintains its officers, carries on its business, and competes so far as efficiency is concerned with the other companies of the combination; but as to nature and quantity of output and price, the policy is completely controlled by the corporation of which it is a constituent member. The era of the holding corporation began in the nineties, and has extended through that decade and the first decade of the twentieth century. Great examples are the Standard Oil Company and the United States Steel Corporation.

"While some of the holding corporations have remained merely managing companies, others of them, and some of the more important, have also become manufacturing companies. In these instances some plants are under the direct management of the directors of the corporation, while other parts of the busi-

ness are run by subsidiary companies. This stage of development is intermediate between the strictly holding corporation and the merger, next to be spoken of.

"Under the common law the stock of one corporation could not be held by another; therefore the holding corporation was declared to be invalid. This situation was met by enactment of corporation laws under which it was valid for a corporation to hold stock of other corporations. The first of the States to reverse the common-law principle was New Jersey. She has been followed by several others, notably among which are Delaware, West Virginia, and Maine. The liberal, not to say lax, corporation laws of these States have led to the holding corporations being organized under their laws, and mainly under the laws of New Jersey and Delaware. According to Frederick W. Kelsey, the State of New Jersey profits to the extent of over \$3,000,000 per annum because of its pioneer position in passing liberal corporation laws.

"However, the corporations which are in whole or in part holding companies, organized under the laws of these States, are now being attacked in the United States Court. In 1911 orders were given for the dissolution of the Standard Oil and the American Tobacco companies, the first of which was strictly a holding company. (See pp. 181-187.) Many other holding corporations are now attacked by the Attorney General of the United States and must fight for their existence.

"The holding corporation began in 1897, but the great consolidations did not begin until in 1899, since which time the holding corporation has been the dominant form of consolidation.

"(5.) *Complete Merger*.—This is the final stage in concentration of management. The stock of the constituent companies of the combination is actually bought in and cancelled, the only stock being that of the master company. If, for instance, the different companies of the United States Steel Corporation—the Federal Steel, the Carnegie Steel, and others—cease to exist by their stock being cancelled and stock of the Steel Corporation be the only existing issue, we should

have the final stage of corporation management for this gigantic company.

"Since the recent decisions of the United States Supreme Court (see pp. 190-191), which seem to indicate that holding companies will be in a stronger position if they are actually manufacturing companies, it is easy to predict that the great consolidations, now forming, so far as practicable will become unified corporations. The merger began to become important about 1904, and since that time its growth has steadily continued, although, as already pointed out, the holding company is still the dominant form of concentration.

"Just as the pool, the trust, and the holding corporation have been successively attacked in the courts, there can be little doubt that the great merger will also there be attacked. Indeed, for intrastate commerce such attack has already been begun. For instance, the Diamond Match Company, which bought outright the properties of competing concerns engaged in the manufacture of matches, was declared to be an illegal monopoly in the State of Michigan. Similar attack is likely to follow for interstate commerce under the Sherman act."

The Amalgamated Copper Company did not come into existence until the "trust," strictly so-called, had gone out of fashion, under the condemnation of the courts. It typifies the holding company, but has deemed it wise to get the title to all the properties of its constituent companies in Montana in one company, the Anaconda.

One of the appellants testified to a conversation had with Mr. Kelley, the general counsel of the Amalgamated, while the work of consolidation was going on, in which the latter said that the Federal Government was opposed to holding companies. Though Mr. Kelley testified later, he did not notice this item of testimony.

The Amalgamated started off master of more productive copper properties than were ever before brought under one control. Assimilating the Anaconda, the Washoe, the Parrot

and the Colorado on its organization in 1899, and at once acquiring a huge block of Boston & Montana, it openly took over the last-named great company and the Butte & Boston in 1901, an eighty-million-dollar purchase. In 1906, the Heinze properties were absorbed, and in 1910 the Clark mines, and the rich area belonging to the Alice, since which time it has been without a rival worthy of the name in the Butte field.

We are not permitted to imagine that the firm of Kidder, Peabody & Co., bankers and brokers of Boston, just happened to have \$80,000,000 worth of these stocks in their safe, any more than that Mr. William S. Bogart just happened to have about his person or in his strong box the fine assortment of stocks acquired by the Amalgamated when it began business, and for which it paid \$75,000,000. These people simply held the stock for the projectors of the company, who, in what seemed to them the appropriate and propitious season, caused it to be turned over to the company. It implies, as every one conversant with business transactions of the magnitude of these will recognize, a campaign to accumulate by the projectors through their agents and brokers the huge blocks thus formally purchased by the company.

Doubtless the Boston stocks had been held for some time previous to May, 1901, by the parties who were ordering the affairs of the Amalgamated. This is obvious from the recital of documents in the record. It appears therefrom that Mr. Rogers was a Boston & Montana stockholder, that some litigation in New Jersey had intercepted an effort which had been in progress for some time to acquire these stocks, and turn them over to the Amalgamated.

There is only one conclusion to be drawn from the testimony. The Amalgamated actually did formally acquire within two years of its organization all, or the majority of the stock of six great, prosperous, competing copper com-

panies of the Butte camp, including the largest producers in the world, the group putting out about 90 per cent of its copper yield. It is reasonable to assume that it was organized for the purpose of thus acquiring and holding those stocks. Its subsequent acquisition of the Heinze properties, the Clark properties, and the Alice properties is reasonably to be assigned to the purpose entertained by its projectors at its birth. But whether there was any such purpose or not, the combination was formed, and the various corporations were absorbed and consolidated.

It is unnecessary to prove that any monopoly was established, or that it was the purpose of the projectors to monopolize the copper production of the country. A consolidation of competing companies producing and selling in the markets of the world a very considerable part of the copper which found its way therein, was effected, necessarily eliminating competition between them. The organization was not the result of the ordinary growth and expansion of a business. If under Mr. Daly's efficient management the Anaconda Company had accumulated a surplus which it desired to invest, or its credit was good and it was deemed good business to extend its holdings, it might legitimately have gone out and bought the Colorado properties, or those of the Parrot or of the Butte and Boston, or possibly of the Boston & Montana, though such a purchase would give rise immediately to a suspicion that the purchase was made to get rid of a damaging, if not disastrous, competition. If he had accumulated them all at one time, or practically at one time, the conclusion would be well-nigh irresistible that it was a consolidation to eliminate competition, or to monopolize or dominate the market. But Mr. Rogers is introduced into the project that was carried out, with Mr. Rockefeller, strangers in the copper world. With Mr. Daly they organize a holding company, which secures control of these corporations, holds a majority of their stocks, or sufficient to

dominate them. These strangers might have thought copper stocks excellent investments. They might have thought it wise, taking no further thought than that good dividends would be returned and the market price advance, to buy some of these stocks. But why get control of each of the companies? And why organize another company to hold the stocks thus acquired? Mr. Burrage, whose testimony discloses, but only very feebly discloses, the effort he made, somewhat resentfully, not to say petulantly, not to tell anything more than he had to—Mr. Burrage, on whose testimony reliance is placed to justify the existence of this institution, is unable to tell why it was either necessary or desirable to organize the Amalgamated. Witness the following testimony:

“I cannot tell you why Mr. Rogers and associates, having acquired the control of these stocks which subsequently were transferred to the Amalgamated, he and his associates did not hold them, or why a separate corporation was organized which became the holder of these stocks; it is not within my knowledge as to why Mr. Rogers did not or did do a thing.”

Record, pages 968-969.

It was organized for the same reason that the Northern Securities Company was organized, to hold the stocks of Mr. Hill and his associates — enough to control — of the Great Northern, Northern Pacific and Burlington, and for identically the same reason that that corporation was held to exist in violation of the Sherman law, this must be.

It was recently held upon the authority of the Northern Securities case that the acquisition by a holding company of the stocks of two competing coal companies presents the case of a combination in violation of the Sherman act.

U. S. v. Reading Co., 226 Fed., 229, 271, 272.

That case is direct authority in support of the contention of the appellants as to the illegal character of the Amalgamated organization.

It was no doubt in anticipation of some express adjudication to that effect that the Amalgamated passed out of existence, and the title to the properties of all the companies it controlled was placed in the Anaconda.

The Sherman Anti-trust Act was not intended to prevent the ordinary and usual contracts made in the course and development of a successful business, by which it is extended. But any departure from that course, as a consequence of which competing concerns are combined, is denounced by it.

In *United States v. Union Pacific R. R. Co.*, 226 U. S., 61, Mr. Justice Day elucidated the "rule of reason," declared in the *Standard Oil and Tobacco Company* cases. In the course of the opinion he said that it was in those cases "pointed out that the statute did not forbid or restrain the power to make *normal* and *usual* contracts to further trade by resorting to all *normal* methods." Indeed, he but adopted the language of Chief Justice White in the *Tobacco Company* case.

In the brief of the Attorney General, in what is known as the *Anthracite Coal Company* case, the following propositions are said to be deducible from the decisions of the Supreme Court, viz:

"(a.) Any combination, not the 'result of normal methods of industrial developments,' which by destroying competition between traders tends in the long run, if not immediately, to enhance prices and produce the other evils of monopoly, restrains and monopolizes trade.

"(b.) That a combination is not the 'result of normal methods of industrial development' may be determined by its own 'inherent nature or effect.'

"(c.) Where it does not appear from the 'inherent nature or effect' of a combination that it is not the 're-

sult of normal methods of industrial development,' the question must be determined in the light of all the surrounding circumstances of the given case, including the purpose of the parties (*Standard Oil Co. v. U. S.*; *U. S. v. Am. Tobacco Co.*)."

Recurring to the case with which the brief deals, the author adds:

"Applying these principles to the present case, we have competition destroyed forever between two corporate owners, producers, buyers, and sellers of anthracite coal engaged in interstate commerce, by vesting control of each in a third corporation—a mere holding company—not itself engaged in mining or selling coal or any other business."

Brief, p. 150.

And then the following observation in line with ideas heretofore advanced is made:

"Whilst within limits the acquisition and operation of the plants of competitive companies by a corporation actually engaged in trade may be deemed an incident of normal growth, the acquisition of the stocks of two or more such companies by a holding corporation, not itself engaged in trade, for the purpose of centralizing control, is no more a normal method of developing trade than the similar centralization of control in common trustees under the old form of trust. In such case, the holding company, indeed, is but the old trust in corporate form (Brief, p. 152)."

The views thus expressed are fully vindicated by the decision in the "Harvester Trust" case and by the opinions of the majority of the court.

Because it has been said that the Amalgamated has never been guilty of any "unfair competition" through which its rivals were wrecked that they might be absorbed, the fol-

lowing is quoted from the opinion of Judge Hook, exonerating the International Harvester Company from accusations of that character:

"It is but just, however, to say and to make it plain that in the main the business conduct of the company toward its competitors and the public has been honorable, clean and fair. Some petty dishonesties were tracked in at the start, mostly some subordinates who had been in the service of the old company, but they were soon gotten rid of. In this connection it should also be said that specific charges of misconduct were made in the Government's petition which found no warrant whatever in the proof. They were of such a character and there was so much of them, apparently without foundation, that the case is exceptional in that particular."

U. S. v. Int. Har. Co., 214 Fed., 987-1002.

The organization was outlawed, not because of the methods it pursued, but because it came into existence and had its being in defiance of the law thus announced:

"Suppression of competition where the parties to a combination control a large portion of the interstate or foreign commerce in the articles, and where there is no obligation to form the combination arising out of the fact that the parties to the same are losing money or the like, has been held an undue restraint of trade. See

Continental Wall Paper Co. v. Voight & Sons, 212 U. S., 227.

Same v. Same, 143 Fed., 939.

Swift & Co. v. United States, 196 U. S., 375.

Addyston Pipe Co. v. United States, 175 U. S., 211; 85 Fed., 271.

Chattanooga Foundry Co. v. Atlanta, 203 U. S., 390.

Montague v. Lowrey, 193 U. S., 38."

There can be no doubt that if the six companies whose stock the Amalgamated obtained at the outset of its career—

all prosperous, all vigorous—had entered into an agreement with each other to fix the price at which they would sell their product, providing therein that none should sell at a price less than that thus agreed upon, the contract would have been in plain violation of the statute. The same result was achieved by the control which the Amalgamated secured over them. It could not consult its own interest thereafter and allow these companies to compete. Touching this phase of the inquiry before us, equally presented in the Harvester case, the court, in the opinion therein, said:

"We think it may be laid down as a general rule that if companies could not make a legal contract as to prices or as to collateral services they could not legally unite, and as the companies named did in effect unite the sole question is as to whether they could have agreed on prices and what collateral services they could render when their companies were all prosperous and they jointly controlled 80 to 85 per cent of the business in that line in the United States. We think they could not have made such an agreement.

Continental Wall Paper Co. v. Voight & Sons,
212 U. S., 227.

Same v. Same, 148 Fed., 939.

Addyston Pipe Co., v. United States, 175 U. S.,
211.

Swift & Co., v. United States, 196 U. S., 375."

And then, in line with the idea heretofore advanced, borrowed from it, that the acquisition by the Anaconda of any one, possibly two, of the weaker companies might not be illegal, the opinion continues:

"If the five companies which formed the International had been small and their combination had been essential to enable them to compete with large corporations in the same line, then their uniting would, in the light of reason, not have been in restraint of trade, but in the furtherance of it; but when they con-

stituted the largest manufacturers of their articles in America, if not in the world, and held jointly about 80 to 85 per cent of the trade, and two at least of the companies forming the combination were prosperous, their combining was, when similarly viewed, an unreasonable restraint of trade."

Either the Anaconda or the Boston & Montana, when control of them passed to the Amalgamated, "might have stood against the world." Not one of the companies absorbed was shown to be in financial straits and was not. The essential facts presented here and thus far canvassed are identical with those with which the court dealt in the Harvester case, save that the consolidating companies therein considered controlled 80 to 85 per cent of the trade, those entering into the present combination from 25 to 45. It is impossible to differentiate the cases on that basis.

A further similarity appears. The opinion referred to continues:

"The International is not only a great manufacturing company, but by the American Company is a great dealer in agricultural implements in interstate and foreign commerce, and so the case comes more nearly within the ruling in *Addyston Pipe Co. v. United States*, 175 U. S., 211, than *United States v. Knight*, 156 U. S., 1."

Not only was each of the subsidiary companies in this case a dealer in copper, selling through a sales agency in all the markets of the world, but that agency, becoming the United Metals Selling Company, in which Mr. Rogers was a stockholder from its organization, about the time the Amalgamated came into being, is now controlled by the Anaconda, which owns all its capital stock, so that the last-mentioned company is not only the greatest producer of copper in the world, but it is the greatest dealer in the world in that commodity.

The basis upon which it is believed the Amalgamated may escape the condemnation of the statute was not made clear at the argument. Much was made of remarks appearing in various opinions of the courts to the effect that the restraint of trade accomplished must be something more than an indirect, incidental interference, not the immediate, necessary or probable result. But what was the main result to be accomplished to which the other result was only incidental? It is said that the consolidation was to effect economies. A similar reason has been assigned, and rarely without justification in the event, for the existence of every trust that ever came into being. It is confessed that, as a rule, economy of operation may be effected through relatively large units. But the people of the nation, while offering no obstacle, so far as the law is concerned, to the development of gigantic enterprises by "usual methods" or by making "normal and usual contracts," have chosen rather to maintain competition than to enjoy the advantage that may flow from combination.

In this connection it may be said that the power to regulate prices is by no means the only, though it may be the most commonly recognized, reason that makes monopoly objectionable or that induced the passage of the Sherman act.

See *International Harvester Co. v. Missouri*, 234 U. S., 199, in which the character of the plaintiff in error was said to arise from the fact that there was "a union of able competitors and a cessation of their competition."

The Colorado Company chose rather, while it maintained an independent existence, to operate its own smelter than to have its ores treated at the Anaconda; so the Butte & Boston, and Heinze, and so, with his great business capacity and sagacity, did Senator Clark. It was not until they were each dominated by the Amalgamated that, the policy of the constituent companies in that regard underwent a change.

They did not have their ores smelted at Anaconda, because there would have been a smelter charge which would have more than overcome the loss incident to the operation of their less efficient works. That system would have impoverished them to enrich the companies which owned the smelters that were operated. It was profitable for the stockholders of the two greater companies to have the other smelters dismantled and profitable, of course, for the interests that dominated them all. But the subject of economy must have presented itself in quite a different aspect to the minority stockholders of the lesser corporation.

So, likewise, as to the apex controversies said to have had a part in the matter. If the Amalgamated were the only holder of stock in any of the subsidiary companies, it would be of no consequence as to how those controversies were adjusted. Under the organization perfected, the power was placed in the Amalgamated to resolve them as best suited its interest. The minority holders were obliged to trust to its generosity and its justice. A judge is not allowed to sit in a cause in the result of which he is interested, so frail does the law recognize humanity to be. The law has no reason to approve of a combination either to effect such economies, or as a substitute for the courts in the resolution of apex controversies.

But there is no answer in any of these suggestions as to why the Amalgamated, the holding company, was organized. The economies referred to were made possible, not by the organization of the Amalgamated, but by the acquisition by the same persons of enough of the stock of the constituent companies to control them. If the same individuals held a majority of the stock of each, the same result would be possible. There was no occasion for a holding company to effect any such purpose. Hill and his associates might have elected directors of the Northern Pacific, the Great Northern and Burlington, controlling the

stock of each as they did when they organized the Northern Securities Company. The trouble was that control of one company might at any time get away. That company might start cutting rates or otherwise begin to compete. It was to ensure the maintenance of control over all three roads that the holding company was formed. The Amalgamated had its origin about the same time and it was organized with a similar purpose.

The consolidation out of which this litigation grows, the merging of all these companies in the Anaconda, is in the way of acceptance of the theory of economy advanced in justification of the organization of the Amalgamated. It was to effect economies that the new merger was accomplished, we are told. The old arrangement could not have permitted them if that is true. But the real reason for the new arrangement was given by Mr. Kelley to the witness Blum—the Federal Government is opposed to holding companies. An idea prevailed that the holding company could not be justified under the law. And there is no room for it in our industrial organization. It serves no purpose except the purpose of monopoly. So the District Court of the Eastern District of Pennsylvania held in the Reading case above cited.

As pointed out by President Van Hise an idea obtained that by uniting the property in one corporation the ban of the law might be avoided. An individual may acquire property, it was argued, in unlimited amount. Why not a corporation? But when subjected to the test, this court held that the form which the consolidation takes is of no consequence. Immunity was claimed for the American Tobacco Company, because it had itself become the owner of the properties of the companies it absorbed, or at least it was claimed that it could not be divested of the properties so acquired. But Chief Justice White, speaking of what had been decided in the Standard Oil case, said of the law that it

"embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute."

The Harvester Trust was formed on this plan. Referring to the language above quoted, the court said, in its opinion in the suit brought by the Government to dissolve it, after reciting the language last above quoted:

"No weight is attached therefore to the means by which the combination was formed if a combination within the purview of the statute was created. That it was a combination of five companies is clear. The fact that this combination took the form of a new corporation is immaterial.

U. S. v. American Tobacco Co., 221 U. S., 106.

U. S. v. E. I. du Pont de Nemours & Co., 188 Fed., 127.

"Was this combination in restraint of trade? It substantially suppressed all competition between the five companies, and the restraint of competition between combining companies is as illegal as destruction of competition between them without combining."

The U. S. Steel Corporation acquired the properties of the companies absorbed by it, but the transaction fell, notwithstanding, under the condemnation of the court.

U. S. v. U. S. Steel Corporation, 223 Fed., 178.

The Can Trust and the Kodak Trust have both been outlawed since the case was first argued.

U. S. v. Am. Can Co., 220 Fed., 859-901.

U. S. v. Eastman Kodak Co., 226 Fed., 62.

A mining company may prolong its life by the acquisition of adjacent mining property in the ordinary course of business, by making "normal and usual contracts" and by the "normal methods of industrial development," but if these terms mean anything they cannot include a process by which a corporation having capital of \$30,000,000 becomes one with a capital of \$150,000,000, the additional stock being exchanged for properties of other companies engaged in a like business. Either the Red Metals Company was already controlled by the Amalgamated as the evidence compels us to believe, or it was engaged in competition with the former. If it was, then its absorption in 1910 was in violation of the Sherman act. Either the Alice Company was controlled by the Amalgamated or it was a potential competitor in the production of copper and the acquisition of its property was in contravention of the Sherman act. For no one can assert that it is in accordance with "normal methods" of industrial development for one corporation to go out into the market and purchase a majority of the shares of another corporation and then force upon the minority stockholders a sale or rather an exchange for stock in either the purchasing company or a third company. If it be so, "'tis a custom more honored in the breach than in the observance."

It is impossible to doubt that the Amalgamated hoped to find the Alice properties copper-bearing.

It appears that the Anaconda is by exactly the same process gathering unto itself for some more stock which it contemplates issuing, the properties of the International Smelting and Refining Company figured at \$19,000,000, including a copper and lead smelter in Utah, a copper refinery in New Jersey and a lead refinery in Indiana.

It has already acquired extensive interests in Arizona and Mexico—holding stock in the Inspiration and Greene-Cananea, and is now constructing a smelter in Arizona.

Doubtless the projectors of the Amalgamated had in mind

that they would dismantle the smelter of the Colorado and the Butte & Boston, of Heinze and of Clark, and that they would otherwise institute economies, but, as pointed out, all trusts make like claims as a justification for their existence.

In the answer in the Harvester case was the following paragraph:

"23 They aver that the purpose of the formation of the International Harvester Company was to secure large economies in the manufacture of harvesting machinery and other agricultural implements by producing more cheaply and of better quality the principal raw materials required therefor; by enlarging the facilities and at the same time correcting the wasteful methods then employed in the distribution of such machines and which ultimately would have resulted in higher prices, or in serious curtailment of the service and credit extended to the farmers; by extending the foreign trade in such machines and implements, and by better organized experimental and inspection departments, making the machines and implements more durable and efficient, without increasing their cost to the farmer."

It has ever been contended that if such is the "paramount object" or if there be a paramount purpose, the restraint of trade that ensues from a combination of competing companies not coming about in "the ordinary course of industrial development," the law sanctions it. It was strenuously insisted upon in the Union Pacific case and disallowed by the court. If the purpose denounced by the act be present, or if the power to restrain trade exists by virtue of the consolidation, it is immaterial that there may be another purpose more potent in inducing the combination.

U. S. v. Union Pacific, 226 U. S., 61.

Nor is it of consequence that the power has not been used to raise prices or otherwise oppress the public.

In the Harvester case the court quotes from one of the opinions of this court to the effect that:

"All the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

In the Union Pacific case the court said:

"It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act."

In a late case presenting many features strikingly like those that are paramount in this one, the court said:

"The power under and pursuant to the combination to do the prohibited things is what brands it (the combination) as illegal, not the actual exercise of that power, although when a plaintiff sues for damages he must, of course, show the combination, its operation, and that it has resulted in damages to him. And of course, to bring a combination of this character within the condemnation of the statute, it is not necessary to show that a complete and United States wide monopoly has been actually created, or that the entire trade or business and production of an article has been brought within the control of the combination, or ever will be. It is no defense for such a combination to show that there is still some competition and some competitors, and that the acts of the combination do not wholly and entirely control interstate commerce in the article or absolutely fetter it. If the combination be one in restraint of trade or commerce among the several States to any substantial degree, it is within the condemnation of the statute."

O'Halloran *v.* Am. S. G. S. Co., 207 Fed., 187.

As heretofore asserted, the only difference in the essential facts surrounding the organization of the Amalgamated and the International Harvester Company is that the latter controlled a greater proportion of the trade. But the Amalgamated controlled as large a proportion of the copper production—say 30 per cent—as did the Reading Holding Company of anthracite. Touching this phase of the case the Attorney General says in his brief :

“If it be said that the Reading Holding Company, through its ownership of the stock of the Reading Railroad Company and the Reading Coal Company, controls only part of the trade in anthracite coal, the answer is that the Supreme Court has held over and over again that it need not be shown that the combination, in fact, results in a total suppression of trade, or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition. (*Northern Securities Co. v. United States*, 193 U. S., 197, 332.”)

And then he calls attention to the language of the second section of the act, which prohibits a monopoly of “any part” of trade or commerce, quoting from the opinion in *Standard Oil v. U. S.*, 226 U. S., 161, as follows:

“The commerce referred to by the words ‘any part,’ construed in the light of the manifest purpose of the statute, has both a geographical and a distributive significance, that is, it includes any portion of the United States and any one of the classes of things forming a part of interstate or foreign commerce.”

The question of the unlawful character of the Amalgamated Copper Company, not in its acts but in its organization, has thus far been canvassed as though the testimony

of Mr. Lawson were not in the record, because at the argument below counsel seemed to assume that the case rested, so far as that phase of it goes, upon what was said by the witness. It may be totally disregarded and no warrant can be found in the law or the decisions under it for such an industrial combination as is being considered. The necessary inferences from its history condemn it.

It is conceded that giving credence to the evidence of Lawson, the institution exists in violation of the law. It developed, according to him, pursuant to a plan to monopolize the copper production of the world. It followed hard upon the heels of the inglorious failure spoken of as the Secretan debacle, as the court knows historically. It may be that the purpose to take in the Rio Tinto mines was shadowy, a thing thought of rather than deliberately entered upon. It may likewise be that the acquisition of all the mines of the United States was regarded as an end ultimately to be reached rather than immediately to be attained, but that this corporation was organized as the "copper trust," intending through it to dominate the copper production of this country at least, there is no room for serious question, nor is there reason to doubt what Mr. Lawson tells about it. Indeed, it is not suggested upon what basis the court can discard this evidence or fail to give full value to it. There is nothing inherently unbelievable about it. Mr. Lawson is unimpeached upon this record. It was somewhat vehemently asseverated at the argument below that his character as a stockbroker and his reputation as a writer of sensational magazine articles required the court to ignore his contribution to the history of this interesting venture in the field of high finance. The writer knows of no rule of law that will permit the court to inform itself in any such manner. The witness gave his testimony in a manner altogether creditable. His story is uncontradicted in any of its essential features even by Mr. Burrage. It certainly suffers nothing in point of candor,

frankness or credibility by comparison with that of the latter. The court cannot get the impression from the testimony of Mr. Burrage that he was making any effort whatever to enlighten anybody.

The total contribution of Mr. Lawson in the organization of the Amalgamated, according to Burrage, is that Mr. Lawson made "some suggestions."

Let us inquire as to what Mr. Lawson says he did aside from making "some suggestions." In the pursuit of his business as a stockholder he gathered up for the Amalgamated promoters some of the stocks that went into the consolidation, Anaconda, B. & M., B. & B., and Parrot.

Though the Boston companies did not go in until later, the witness was even before 1899 accumulating the stocks of those companies for Mr. Rogers. He advertised in the Boston Herald of May 8, 1899, that the Amalgamated was formed to take over "*all sound producing copper companies*" that promised to pay 8 per cent. It will be remembered that the company itself put out an advertisement asking for subscription to its shares. The Lawson advertisement was published to induce them, and the two were printed in adjacent columns of the same paper.

Mr. Lawson tells that he wrote the company advertisement. The statement then made by Lawson, publicly in such a way as that it must have been brought to the notice of the projectors of the Amalgamated, the adventurers, to use a more appropriate term which proved offensive to Mr. Burrage, touching their purpose, is in entire accord with the testimony he now gives in relation to the same matter. Just why the great copper producing properties were thus to be put in common ownership, the witness tells with a directness coming from a conviction that a great public good was to be achieved by the consolidation. This is what he says:

"In the carrying out of our general scheme, the general scheme which was contemplated all the way through, it would have been very essential to have the marketing of the whole product of the different mines controlled or owned by the consolidated company, as the very foundation idea of the whole scheme was the control of the price of the metal, control to an extent that we could keep the price from the wild fluctuations that had been the history of copper metals from the beginning. In other words, a control that would have enabled us to establish a fair price and to hold that fair price through the ups and downs of general business, through the periods when the metal would be in strong demand, when the demand would let up, and there would be accumulation or over-production, a temporary over-production, and the very essential of that would be a control in the sense which I stated, of the selling, of the getting of the metal to the consumer."

Record, Vol. II, pages 703-704.

Even if such a purpose could be considered as beneficent in character it is condemned by the law and the transaction is not saved by the good intentions of the parties to it.

In the Bathtub Trust Case, 226 U. S., 49, Mr. Justice McKenna said:

"The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results (*United States v. Trans-Missouri Freight Asso.*, 166 U. S., 290; *Armour Packing Co. v. United States*, 209 U. S., 56, 62)."

The intent with which the combination assailed in this case was formed is clear from its history without this direct evidence of the ends sought to be accomplished by its projectors, but the intent in this case is of very little consequence, the necessary effect of the combination being to

place in the Amalgamated the power to restrain trade, the proof of intent to accomplish such restraint is unnecessary. It is only where it does not appear that the "inherent nature and effect" of the combination is to restrain trade that the proof of intent becomes material.

Justice Lurton said in

United States v. Reading Co., 226 U. S., 324, 370 :

"Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence. But when there is only a probability, the intent to produce the consequences may become important. (*U. S. v. St. Louis Term. Assoc.*, 224 U. S., 383, 394; *Swift v. U. S.*, 196 U. S., 375)."

By virtue of the combination effected, the Amalgamated might at any time close down the Washoe or the Colorado, or the Parrot or the Butte & Boston or the Boston & Montana or the Anaconda or any two or more or all of them, cutting the copper output of the country 33 1-3 per cent. These companies were producing about 220,000,000 pounds of approximately 250,000,000 issuing from all the mines of Montana in 1899, being about 36 per cent of the world's production, and about one-half of the total output of the United States. The capital assembled was greater than that of any industrial organization which this country ever knew or has since known, the United States Steel, the American Tobacco Company and the Standard Oil Company alone excepted. If it is not one of the organizations at which the Sherman act was aimed, its language and the history of the times in which it was enacted, the debates in Congress that attended its passage, are alike without any lesson.

Reliance is placed upon the Calumet and Hecla case now practically overruled as recited above. The highest respect is due to the views of the late Justice Lurton expressed therein; but no student of the decisions dealing with the

Sherman act can fail to recognize, as the business world recognizes, that those of more recent date have given a vigor and efficacy to that statute that was denied to it by the courts at an earlier period in its history.

It might, had it come to this court, have met the fate of the Union Pacific-Southern Pacific case, which was here reversed, without any dissent. The decision in the Calumet & Hecla case is put by Justice Lurton and by the learned district judge below squarely upon the principle announced in the Knight case. President Taft declared that that case had been overruled by the Supreme Court. Many able lawyers agree with him and agree likewise that the statute would have been an innocuous thing if the doctrine of the Knight case had not been repudiated. The writer does not believe it has been overruled, but he believes that if the Knight case were now prosecuted the result would be different. It announced what seems to the writer an incontrovertible doctrine, namely, that given a case which presents only a question of production within a State, and the Sherman act is inapplicable; that notwithstanding its pains and penalties, companies who do all their business within a State, who therein manufacture a product that will eventually in whole or in part find its way into interstate commerce, may consolidate as they please without violating the Sherman act.

One can conceive of a half dozen sugar-beet factories in Montana which do no interstate business at all. They get all their beets in Montana and sell their product at the factories to buyers who take it away. The Sherman act cannot reach them. The arm of the Federal law cannot touch them. The Knight case was tried as though it presented such a case. Doubtless the sugar companies involved did, in fact, transport their product beyond the State of Pennsylvania for sale, were indeed engaged in interstate commerce, but if so, either the attorneys for the Government

failed to make the proper averment or that feature of the case was disregarded by the court. The writer does not pretend to say whether the Knight case was or was not properly applied in the Calumet & Hecla case. It is neither governing nor persuasive here. It clearly appears that each of the companies besides being engaged in *producing* copper in Montana was engaged in transporting for sale and selling it through sales agents all over the world. And it further appears that at the very time the Amalgamated was organized, the United Metals Selling Company came into existence, with Mr. Rogers as one of the stockholders, that it handled the product of the Amalgamated companies and was eventually absorbed by it. Mr. Lawson declares that its organization was a part of the general plan of control pursuant to which the project was launched in the first place.

The Knight case has been appealed to in the case of every trust condemned by the Supreme Court or the inferior courts since it was decided. (See *U. S. v. Am. Tobacco Co.*, 164 Fed., 700, in which its inapplicability to the ordinary trust case is demonstrated by three of the judges comprising the court.)

Reliance was placed upon it in the Harvester case, but it was disposed of by the court in a brief paragraph heretofore quoted. As if to meet the conditions with which it dealt, the International Harvester Company organized a selling company to which each factory turned over its product in the State in which it was situated. The court found this subterfuge unavailing.

It is insisted that upon each of the grounds urged the sale in question should be adjudged to be null and void, and that this court should direct a decree accordingly.

Respectfully submitted,

WALSH & NOLAN,
Solicitors for Appellants.

T. J. WALSH,
Counsel for Appellants.

THE
JOURNAL
OF
THE
AMERICAN
MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.

Subscription Price, Five Dollars Per Annum in Advance

Single Copies, Fifteen Cents

Entered as Second-Class Matter, May 2, 1902, under Post Office No. 383, at Chicago, Ill., under special rate of Post Office Department. Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917, authorized on July 10, 1918.

Postage paid at Chicago, Ill., and at additional mailing offices. Postmaster: Send address changes in this journal to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago 10, Ill. Second-class postage paid at Chicago, Ill., and at additional mailing offices. Postmaster: Send address changes in this journal to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago 10, Ill.

Copyright, 1919, by American Medical Association

Printed at the Journal of the American Medical Association, 535 North Dearborn Street, Chicago 10, Ill.

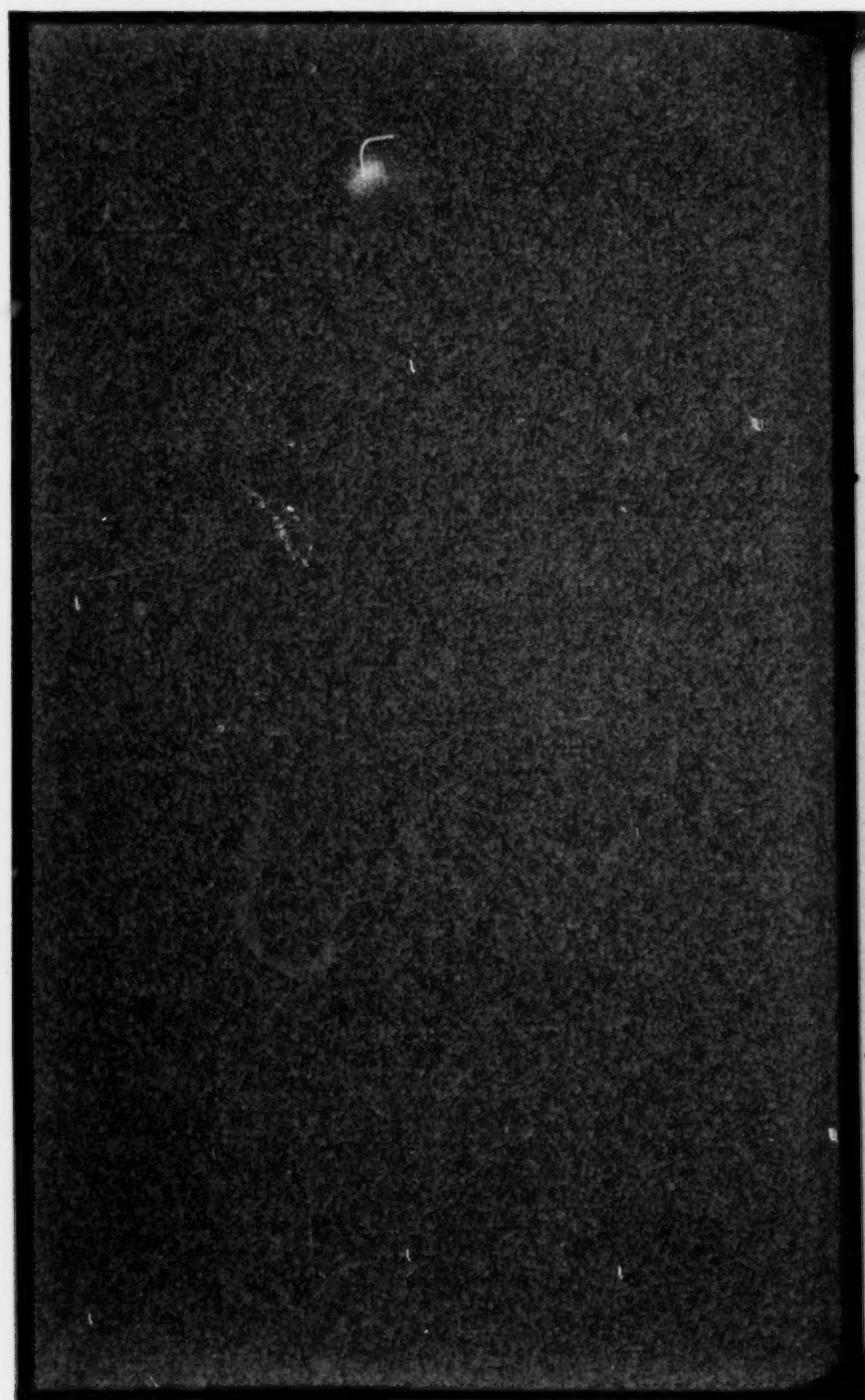
Published by the American Medical Association, 535 North Dearborn Street, Chicago 10, Ill.

Subscription orders, notices of change of address, and all correspondence should be sent to the Editor, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago 10, Ill.

Entered as Second-Class Matter, May 2, 1902, under Post Office No. 383, at Chicago, Ill., under special rate of Post Office Department. Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917, authorized on July 10, 1918.

Postage paid at Chicago, Ill., and at additional mailing offices. Postmaster: Send address changes in this journal to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago 10, Ill.

Copyright, 1919, by American Medical Association



INDEX.

POINTS.

	PAGE
STATEMENT OF THE CASE.....	2-49
I. Corporate proceedings of Alice Company touching sale of its properties to Anaconda Copper Mining Company and attempted dissolution of Alice Company	2-4
II. Relations existing between the Alice Company and Anaconda Company at time of the transfer	5-8
III. Value of Alice property in the year 1910, and character of the mineral contained therein.....	8-36
IV. The corporate business of Alice had become unprofitable and could not be carried on by the corporation; there were insufficient funds to continue the business and no money with which to pay existing indebtedness. The corporation was in failing circumstances and, insofar as its financial condition affected its business prospects, was in fact insolvent	36-38
V. The evidence fails to disclose any violation of the Sherman Anti-Trust Law in connection with the acquisition of the Alice properties, or otherwise, but expressly and affirmatively shows to the contrary.....	38-46
VI. Findings of the District Court.....	46-47
VII. Findings of the Court of Appeals.....	47-49
VIII. General contentions of Appellees upon this appeal.	49

II

	PAGE
ARGUMENT.....	50-198
I. Introductory statement	50-52
II. A conveyance of all the property of the Alice was expressly authorized by its Articles of incorporation and by the statutory law of the State of Utah ..	52-72
III. The general rule that corporations must have unanimous consent of all stockholders in order to dispose of their property has no application in Utah.	72-73
IV. The findings of the District Court and Court of Appeals that the majority stockholders of the Alice Company had full power to dispose of all its property by reason of its financial condition, the state of its property and corporate business and its inability to further carry out the purposes for which it was created is fully supported by both the law and the evidence.....	73-79
V. Both the District Court and the Court of Appeals erred in holding that by reason of unity of control of the Alice Company and Anaconda Company the burden of proof rested upon the Anaconda Company to show that the sale was fair and the consideration adequate, and that the burden was not discharged.....	80-89
VI. The subsequent ratification of the contract of sale by the stockholders of the Alice Company renders the question of common directors immaterial.	90-91

III

PAGE

VII. The sale of the Alice property was wise, and also advantageous to the Alice Company	91-96
VIII. No officer of the Alice Company concealed any material facts from the Alice stockholders.....	96-100
IX. Under the circumstances of this case the conveyance in question is not affected by the fact that the consideration paid therefor was capital stock of the Anaconda Company.....	100-111
X. The contract of sale having been fully executed, the contention that Alice Company had no power to transfer for capital stock cannot now be urged by a stockholder of Alice in behalf of that corporation.....	112-114
THE SHERMAN ANTI-TRUST LAW.....	115
I. The Sherman Anti-Trust Law cannot be invoked by stockholders of a selling corporation to rescind an executed sale upon the ground that the buying corporation exists in contravention of the Sherman Anti-Trust Law.....	115-132
II. The purchase of the Alice properties would not tend to effectuate any illegal purpose to monopolize interstate commerce in copper, as alleged in complainants' bill, and would therefore neither be illegal nor against public policy.....	133-134
III. Neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company was at the time of the	

IV

PAGE

purchase of the Alice properties, neither had they ever been, illegal combinations in restraint of interstate commerce, and the Anaconda Company, under the circumstances disclosed in this case, had the legal right to acquire the Alice properties for the purposes and in the manner in which they were acquired..... 135-180

THE INTERLOCUTORY DECREE WAS RIGHT..... 181

- I. Although the findings of fact made by the court be not disturbed, and be held by this court to be justified by the testimony in the case, the decree of the court is nevertheless correct and should, in all respects, be affirmed.....181-198

CASES CITED.

	PAGE
Adams Mining Co. <i>v.</i> Senter, 26 Mich. 73.....	84
Addyston Pipe & Steel Co. <i>v.</i> U. S., 175 U. S. 211, 244.....	170
Allen <i>v.</i> Ajax Mining Co., 30 Mont. 490.....	58
American Tobacco Co. <i>v.</i> U. S., 221 U. S. 185	125
Ames <i>v.</i> Am. Tel. & Tel. Co., 166 Fed. 820...	116
Bigelow <i>v.</i> Calumet, etc., Co., 155 Fed. 869, 876; 167 Fed. 704; 167 Fed. 721.....	123, 150
Blindell <i>et al.</i> <i>v.</i> Hagan, 54 Fed. 41.....	116
Block <i>v.</i> Standard Distilling & Dist. Co., 95 Fed. 979.....	116
Blythe <i>v.</i> Hinckley, 84 Fed. 234.....	89
Booth <i>v.</i> Robison, 55 Md. 419.....	84
Bowditch <i>v.</i> Jackson Co., 82 Atl. 1014, 1018	75, 95, 193
Bowman <i>v.</i> Foster & Logan Hdw. Co., 94 Fed. 592.....	114
Boyd <i>v.</i> New York & H. R. Co., 220 Fed. 179	126
Buffalo and N. Y. Cen. R. R. Co. <i>v.</i> Dudley, 4 Kernan 575.....	61
Byrne <i>v.</i> Schuyler Elec. Mfg. Co., 65 Conn. 348.....	106
Camors-McConnell Co. <i>v.</i> McConnell, 140 Fed. 415.....	126
Celluloid Mfg. Co. <i>v.</i> Cellonite Mfg. Co., 40 Fed. 476.....	89
Chicago Junction Ry. Co. <i>v.</i> King, 222 U. S. 220, 224.....	132
Clark & Marshall on Corporations, page 531.	105
Clark & Marshall on Private Corporations, p. 551, 553, 554.....	114
Connolly <i>v.</i> Union Sewer Pipe Co., 184 U. S. 540, 547.....	126
Cook on Corporations, 6th Ed. 658.....	90

	PAGE
Cook on Corporations, 7th Éd., Vol. 2, Sec. 639, p. 1972.....	69
Corey <i>et al.</i> v. Independent Ice Co., 207 Fed. 459.....	116
Cummings v. Parker, 157 S. W. 629.....	75
Cyclopedia of Law & Procedure, Vol. 16, page 478.....	190
Davis v. U. S. Elec. Power & L. Co., 77 Md. 35.....	84
Deitch v. Staub, 115 Fed. 317.....	89
Detroit United Ry. v. Michigan, 242 U. S. 238-249.....	68
Diamond Match Co. v. Kover, 106 N. W. 374	129
Durfee v. Old Colony & Falls River Ry. Co. <i>et al.</i> , 5 Allen (Mass.) 240.....	61
Eichel <i>et al.</i> v. U. S. Fidelity & Guaranty Co., 245 U. S. 102.....	132
Evansville Pub. Hall Co. v. Bank, 42 N. E. 1097.....	85
Fairbank (N. K.) Co. v. Windsor, 124 Fed. 202	89
First Nat. Bank v. Nat. Ex. Bank, 92 U. S. 122.....	108
Flag v. Manhattan Ry. Co., 10 Fed. 413, 433.	84
Fleitmann v. Welsbach Co., 240 U. S. 27, 29.....	114, 116, 122, 124
Forrester v. B. & M. Co., 21 Mont. 544.....	67, 74
Garey v. St. Joe Mining Co. (Utah), 91 Pac. 369.....	61, 66
Germer <i>et al.</i> v. Triple Steel, etc., Co., 54 S. E. 509.....	61
Greenwood v. Freight Co., 105 U. S. 13.....	69
Greer Mills & Co. v. Stroller, 77 Fed. 2.....	116
Gulf C. & S. Ry. Co. v. Miami Co., 86 Fed. 207	116
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 270.....	61
Hayden v. Official Hotel Red Book, etc., Co., 42 Fed. 875.....	75

VII

	PAGE
Hiles <i>v.</i> Hiles & Co., 120 Ill. App. 617.....	85
Hodges <i>v.</i> New England Screw Co., 1 R. I. 347, 53 Am. Dec. 624.....	105, 107
Holmes & Gregg Mfg. Co. <i>v.</i> Holmes & Co., 127 N. Y. 252.....	107
Holmes & Griggs Co. <i>v.</i> Metal Co., 24 Am. St. Rep. 452.....	114
Houston, etc., <i>v.</i> Texas, 44 U. S. L. Ed. 688	126, 130
Illinois Trust & Sav. Bank <i>v.</i> Pacific Ry. Co., 117 Cal. 332.....	131
International Harvester Co. <i>v.</i> Missouri, 234 U. S. 199.....	160, 172
Kohler <i>v.</i> St. Mary's Brewing Co. <i>et al.</i> , 77 Atl. 1016.....	192
Lang <i>v.</i> Reservation M. & S. Co., 93 Pac. 208	54
Leathers <i>v.</i> Janney, 41 La. Ann. 1120.....	84
Leavenworth Co. <i>v.</i> Chicago R. Co., 134 U. S. 688.....	85
Long <i>v.</i> Georgia Pac. Ry. Co., 91 Ala. 519...	131
Looker <i>v.</i> Maynard, 179 U. S. 46.....	61
Louisville & Nashville R. Co. <i>v.</i> Garrett, 231 U. S. 298-315.....	71
McCutcheon <i>v.</i> Merz Capsule Co., 71 Fed. 787	106
Maben <i>v.</i> Gulf Coal & Coke Co., 56 So. 607..	54
McGinniss <i>v.</i> Boston & Montana Co., 29 Mont. 428.....	102, 145
Market St. Ry. Co. <i>v.</i> Hellman, 109 Cal. 571.	61
Mason <i>v.</i> Pewabic Mining Co., 133 U. S. 50..	181
Merriam (C. & G.) Co. <i>v.</i> Syndicate Pub. Co., 237 U. S. 618.....	132
Metcalf <i>v.</i> Am. Furn. Co., 108 Fed. 909.....	123
Metcalf <i>v.</i> American School, etc., Co., 122 Fed. 115.....	126, 127, 132
Met. Tel. Co., etc., <i>v.</i> The Domestic, etc., Tel. Co., 44 N. J. Equity 568.....	90
Miller <i>v.</i> Fleming & Fox Co., 59 S. W. 512...	114

	PAGE
Miners' Ditch Co. v. Zellerbach, 37 Cal. 543, 99 Am. Dec. 300.....	75, 114
Missouri R. R. Co. v. Kansas, 216 U. S. 274..	61
Moore on Interstate Commerce, Sec. 387.....	168
Moore on Interstate Commerce, Sec. 355.....	134
Morawetz. Columbia Law Review, Dec., 1910, Vol. 10, p. 687.....	167
Nor. Securities Co. v. U. S., 193 U. S. 197, 331.....	172
Northwest Trans. Co. v. Boston Marine Ins. Co., 41 Fed. 796.....	89
O'Halloran v. Am. Sea Green Slate Co., 207 Fed. 187, 189, 191.....	173
Paine Lumber Co. v. Neal, 244 U. S. 459, 471.....	116, 122
Pauly v. Pauly, 107 Cal. 8, 48 Am. St. Rep. 98	83
Peabody v. Westerly Waterworks, 37 Atl. 807	75
Pidcock v. Harrington <i>et al.</i> , 64 Fed. 821....	116
Pitcher v. Lone Pine Con. Min. Co., 81 Pac. 1047.....	54
Planter's Bank v. Union Bank, 16 Wallace 500.....	131
Price v. Holcomb, 56 N. W. 407, 411.....	75
R. R. Co. v. Johnson, 58 Kansas, 175, 48 Pac. 847.....	114
Reclamation Dist. No. 70 v. Birks, 113 Pac. 171.....	83
Roemer v. Neumann, 26 Fed. 333.....	89
Salt Lake Auto Motor Co. v. Keith-O'Brien Co. <i>et al.</i> , 143 Pac. 1015.....	67
Santa Cruz v. Wykes, 202 Fed. 371, 372..	114, 126, 130
San Diego v. Pacific Beach Co., 112 Cal. 53, 33 L. R. A. 788, note.....	82
Savings Bank v. O'Reilly, 10 S. W. 865.....	75
Schenectady & Saratoga Plank Road Co. v. Thatcher, 11 N. Y. Court of Appeals, 114.	60

	PAGE
Sewell v. East Cape May Beach Co., 25 Atl. 929.....	75
Sou. Ind. Express Co. v. U. S. Express Co., 88 Fed. 660.....	116
Sou. Ry. Co. v. Gadd, 233 U. S. 272, 276.....	132
Standard Oil Co. v. United States, 221 U. S. 1.....	153, 167, 169, 174
Stewart v. Lehigh Valley Ry. Co., 38 N. J. Law, 505.....	82
Street, Federal Equity Practice, Vol. 2, Sec. 1918.....	89
Swift & Co. v. U. S., 196 U. S. 375, 396, 402...	169
Taft, Wm. H., "The Anti-Trust Act and the Supreme Court ".....	141
Thompson on Corporations, 2nd Ed., Sec. 67.	59
Thompson on Corporations, Section 90	59
Thompson on Corporations, Sec. 1241.....	85
Thompson on Corporations, 2nd Ed., 411-414.	69
Thompson on Corporations, 2nd Ed., Sec. 2424.....	75
Thompson on Corporations, 2nd Ed., Sec. 2429	51, 74, 75
Thompson on Corporations, Secs. 4063, 4065, 4066.....	105
Thompson on Corporations, Sec. 4064.....	104
Thompson on Corporations, Vol. 4, Sec. 5408.	58
Traer v. Lucas Prospecting Co., 99 N. W. 290.	54, 75
Treadwell v. Salisbury Mfg. Co., 7 Gray, 393.....	74, 106, 107
Union Pac. Ry. Co. v. Credit Mobilier, 135 Mass. 367, 377.....	84
U. S. v. American Tobacco Co., 221 U. S. 106, 178.....	155, 157
U. S. v. E. I. DuPont de Nemours & Co., 188 Fed. 127, 150.....	139, 173, 178
U. S. v. Freight Assn., 166 U. S. 334.....	172
U. S. v. International Harvester Co., 214 Fed. 987.....	160, 164

	PAGE
U. S. v. Union Pac. Ry. Co., 226 U. S. 61, 92, 86.....	171
U. S. Rolling Stock v. Atlantic R. Co., 34 Ohio St., 459.....	85
Veener v. U. S. Steel Co., 116 Fed. 1013.....	61
Vicksburg v. Waterworks Co., 202 U. S. 453, 467.....	68
Wheeler <i>et al.</i> v. Abilene Nat. Bank Bldg. Co., 159 Fed. 391.....	191
Wilder Mfg. Co. v. Corn Products Refining Co., 236 U. S. 165, 59 L. Ed. 521, pages 173-176.	116, 117, 126, 129, 132
Williams v. Nall, 108 Ky. 21, 55 S. W. 706..	61
Yazoo & Miss. R. R. Co. v. Wright, 238 U. S. 376, 378.....	132
Zabriski v. Hackensack, etc., Ry. Co., 3 C. E. Green 178, 90 Am. Dec. 617.....	59

STATUTES CITED.

Clayton Act., 38 Stat. at L. 730, 737. Act of Oct. 15th, 1914, Chap. 223, Sec. 16.....	68, 122
Montana Legislature. Act 1899. House Bill 132.....	58
Sherman Anti-Trust Act, 26 Stat. at L. 209.	115, 117, 118, 121, 132, 166
Utah Constitution, Article 12, Section 1.....	57, 66
Utah Constitution, Article 12, Section 13.....	103
Utah Legislature, Act of Feb. 20, 1874.....	56
Utah, Compiled Laws, 1876, page 232.....	56, 66
Utah, Compiled Laws, 1898, Section 353.....	70
Utah, Compiled Laws, 1907, Section 322.....	53, 54, 57, 61, 70, 71
Utah, Compiled Laws, 1907, Section 344.....	103
Utah, Compiled Laws, 1907, Section 353.....	71
Utah, Compiled Laws, 1907, Chapter 72, Sec- tions 3661, <i>et seq.</i>	72

IN THE
Supreme Court of the United States,
OCTOBER TERM, 1917.

No. 820.

PETER GEIDER, JOSEPH R. WALKER,
JOSEPH S. BAER, HENRY S. EVERETT,
MARGARET ANN MEEHAN, EUGENE
BLUM, ISAAC BLUM, EDWARD BLUM,
IRADOR BAAR, ALPHONS DREYFOOS;
and ALPHONS DREYFOOS, EUGENE
CLUM, DAVID C. GOLDENBERG and
EUGENE BASCHO, Co-partners doing
business under the firm name and
style of DREYFOOS, BLUM & Com-
pany; LEOPOLD FREUND and ALICE
FREY,

Appellants,

vs.

ANACONDA COPPER MINING COMPANY,
a Corporation; ALICE GOLD AND SIL-
VER MINING COMPANY, a Corporation,
and JOHN D. RYAN, J. W. ALLEN, W.
D. THORNTON, A. C. CARSON and E. S.
FERRY,

Appellees.

BRIEF FOR APPELLEES.

NOTE: At the time of the preparation of this brief, March, 1919, the brief for the appellants has not been received, although the appeal was taken in

November, 1917. This brief is prepared upon the assurance from counsel for appellants that their brief will be substantially the same as the one filed in the Circuit Court of Appeals.

Throughout this brief the defendants Anaconda Copper Mining Company and Alice Gold and Silver Mining Company will be referred to respectively as the Anaconda Company and Alice Company.

Statement.

In view of the contentions herein to be presented, it is necessary that a statement additional to that which will probably be made by the appellants should be made.

I.

Corporate proceedings of Alice Company touching sale of its properties to Anaconda Copper Mining Company and attempted dissolution of Alice Company.

Prior to the meeting of stockholders herein mentioned, the proper officers of the Anaconda Company and the Alice Company, pursuant to authority vested in them by the respective Boards of Directors of said companies, entered into a contract and agreement whereby, subject to the approval of the stockholders of the Alice Company, said Alice Company was to convey to the Anaconda Company, for a consideration of 30,000 shares of its capital stock and other incidental considerations, all the property of said Alice Company. Thereupon, by

order of the Board of Directors of the Alice Company, a stockholders' meeting of said Company was called and noticed, to be held at its principal office in Salt Lake City, Utah, on the 27th day of May, 1910, for the purpose of considering the proposition of confirming and ratifying said contract of sale. No complaint is made of the regularity of this meeting. Stock of the Alice Company aggregating 295,160 shares out of the total outstanding stock of 400,000 shares, was represented thereat, either in person or by proxy. Thereupon, the contract heretofore referred to was submitted to said meeting, and was duly ratified and confirmed by a vote of 289,500 shares for, and 5,510 shares against, those dissenting being among those represented as appellants in this case (Tr., Vol. I, pp. 317-341).

Being expressly authorized thereunto by the Board of Directors of the Alice Company, such authorization having been so ratified and confirmed by more than two-thirds of the outstanding capital stock of that Company on the first day of June following, said Company, by John D. Ryan, its President, duly executed a deed of conveyance of all its property to the Anaconda Company.

At the time of these transactions it was the intention of the Board of Directors of the Alice Company to dissolve the same and distribute its assets to the stockholders. Touching this point Mr. C. F. Kelley testified as follows:

"The plan from the inception of the general idea of consolidation was to sell the properties of the Alice Company to the Anaconda Company, and at or prior to this meeting a meeting of the stockholders of the Alice Company was called, in the event that the stockholders should ratify the sale by the directors, and the properties be conveyed, that there should be a

dissolution of the Alice Gold and Silver Mining Company—as a matter of fact, I think that prior to that time, the time of the Alice directorate meeting, we had represented to the New York Stock Exchange as a condition to the listing of the stock, that these subsidiary companies, whose holdings would consist of nothing but Anaconda stock, would be dissolved, in order to eliminate any objection that the Stock Exchange might have to double subsidiary companies, or holding companies within holding companies. *I know that was the purpose of the officers and directors of the Alice Company at and prior to the meeting calling this stockholders' meeting*" (Tr., Vol. II, pp. 853-854).

Pursuant to this general plan, the Directors of the Alice Company, by resolution, called a meeting of its stockholders for the 8th day of May, 1911, for the purpose of considering a proposition to dissolve said corporation and to wind up and terminate its existence, which meeting was duly noticed and was in all respects regular; 310,963 shares were represented thereat. By a vote of 297,088 shares to 13,388 shares, it was resolved that the Alice Company should take all necessary steps and do all things necessary and proper under the laws of the State of Utah, to secure the dissolution of this corporation, and to cause a proper distribution to be made to the stockholders entitled, of all of the assets and property of said corporation (Tr., Vol. I, pp. 347-365).

The Bill of Complaint discloses that one of the purposes of the suit is to enjoin such dissolution, so voted by the stockholders of the Company. The Bill of Complaint was filed on the 6th day of November, 1911, almost eighteen months after the stockholders had approved and ratified the sale.

II.

Relations existing between the Alice Company and Anaconda Company at time of the transfer.

At the time of the transaction complained of, the Anaconda Company exercised no controlling influence over the affairs of the Alice Company, further than the fact that John D. Ryan, was a director of the Alice Company and its President, and also a director of the Anaconda Company.

The Board of Directors of the Alice Company consisted of five members, none of whom, save Ryan, had any voice in the affairs of the Anaconda Company.

It is true that the Butte Coalition Company, a holding company organized for the purpose of holding the stock of the Red Metal Mining Company and such other stocks of mining companies as it might purchase, was the owner of a majority of the stock of the Alice Company. Said Butte Coalition Company had a capitalization of One Million shares of the par value of Fifteen Dollars per share. Neither the Anaconda nor Amalgamated Company exercised any right of control over either the Red Metal Mining Company or the Butte Coalition Company. These companies were entirely separate, independent and distinct from either Anaconda or Amalgamated. They were neither organized nor controlled, through directorates of stock ownership, by either of said Companies.

These properties were known as the Cole-Ryan Companies, the controlling spirit in which was one Thomas F. Cole and his associates; and neither the

said Cole nor his associates have ever had any voice in the management of either Anaconda or Amalgamated.

Out of the One Million shares of Butte Coalition, Anaconda owned none and Amalgamated only Fifty Thousand.

Mr. John G. Morony says:

"The organization of the Butte Coalition Company was absolutely separate and distinct from the Amalgamated Copper Company, and as a matter of fact, the Amalgamated Company had absolutely nothing to do with the Butte Coalition Company at the time of its organization, and as far as I know the Amalgamated Copper Company has had absolutely nothing to do with the Butte Coalition Company since its organization" (see Tr., Vol. I, p. 280).

Mr. John D. Ryan says:

"There was no one directly associated in the negotiations with Heinze who had any connection with the Amalgamated Copper Company but myself and attorneys who were acting for me. These negotiations were all with Mr. F. Augustus Heinze. I did not feel that I was representing the Amalgamated Copper Company in these negotiations. I had no authority from the Amalgamated Copper Company to proceed with the negotiations, and as a matter of fact was never acting for the Amalgamated or its interests except in so far as the dismissal of the litigation would prove to be to its interests, and I was trying to bring that about as a part of the trade" (see Tr., Vol. I, pp. 382-383).

The titles to the Heinze properties passed to Thomas F. Cole, and from Thomas F. Cole were transferred to the Red Metal Company. Ten and

one-half million dollars was paid in cash for the Heinze properties. There was not any difficulty in raising the money. The stock was largely oversubscribed. The transfer was made to Cole and from Cole to the Red Metal Mining Company, and then the Butte Coalition Company was organized and it became the holder of the stock of the Red Metal Mining Company (see Tr., Vol. I, pp. 382-384).

In 1905 Mr. Ryan obtained an option on a majority of the stock of the Alice Company, as a personal transaction of his own, and later, upon the organization of the Butte Coalition Company, this option was transferred to it and the stock acquired.

All other matters, save the fact that Mr. Ryan was a common director of the two Companies, and President of the Alice, are wholly unimportant as tending to show control of the Alice Company by either Anaconda or Amalgamated.

It is immaterial through what channel those who held the proxies to vote Alice stock at meeting of the Alice Company received instructions as to how to vote upon the question of sale of Alice properties. The proxies were sent out by the Secretary of the Alice Company. They were accompanied by a circular from the management advising each stockholder that in the opinion of the management the agreement of the company, entered into by authority of its Board of Directors with the Anaconda Company, ought to be ratified and was advantageous to Alice stockholders. In response to this circular letter, the stockholders voting for the confirmation of the trade signed the proxies authorizing the persons named to vote their stock at this meeting and returned them either directly to these persons or to the Secretary of the Company who

had transmitted the blank proxies and the circular letter. Under these circumstances this constituted a direction of the principals to their agents to vote the stock in favor of the proposition equally as much as though each stockholder had given a special direction to vote the stock in this manner. The result was that the persons named in the proxies, or their substitutes, voted this stock directly in accordance with the wishes of the stockholders, and no stockholder has ever disaffirmed the conduct of those who acted for him. In other words, the authority to vote the stock in favor of ratifying the sale of Alice properties to the Anaconda Company came directly from the stockholders themselves, and the particular channel through which this information was conveyed to those whose duty it became to vote the stock is entirely immaterial.

Mr. Ryan being a director of the Alice Company, was also its President. It does not appear that as President Mr. Ryan had, either under the by-laws of the Alice Company or the laws of the State of Utah, any extraordinary powers. As such it was his duty to execute the will of the Board of Directors as expressed in corporate action, such Board of Directors being the governing body of the corporation.

III.

Value of Alice property in the year of 1910, and character of the mineral contained therein.

That the market value of the Alice property in the year 1910, if indeed it had any market value whatever, was far below what was paid for it by

the Anaconda Company, and far below what any one, save the Anaconda Company, with its facilities for cheap development of the property, could or would have paid, is indisputable; and that the price paid by the Anaconda Company was fair, full and adequate, is apparent from a moment's attention to the history of the Alice, the condition of the Alice Company and the metallurgical possibilities of the property. This property appears to have been acquired about the year 1876, and the Company was incorporated in the year 1880. It contained silver ores, much of which carried large quantities of zinc. For some years it was operated profitably, yielding altogether dividends to its stockholders in the amount of \$1,075,000. As its development progressed the ores became much leaner in metal contents, and also much more difficult to treat, on account of the presence of refractory elements, increasing the cost of reducing and treating the same. Increased depths added to the cost of mining and handling, and coincident with the increase of the mining and reduction costs, and lessening of value, the price of silver, the one valuable constituent of the ore, decreased very rapidly, so that about the year 1893 profitable mining operations upon the property ceased, and the property which had been developed to a depth of fifteen hundred feet, and which contained over ten miles of underground workings (Tr., Vol. II, p. 979), was allowed to fill with water up to the seven or eight hundred foot level. Thereafter, a system of leasing was carried on at the property, resulting, after the year 1898, in a constant loss, from over \$20,320.80, the greatest, in the year 1902, to \$1,156 in the year 1911. During the same time the market value of its stock declined from approximately

Three Dollars a share during the early periods of its operations, to a merely nominal sum, and for a period of ten years preceding the acquisition of a majority of the capital stock by the Butte Coalition Company in 1906, the only recorded sale during that time was at the price of twelve and one-half cents per share.

In addition to showing a yearly loss, at the time of the sale to the Anaconda Company in 1910 the Company had an outstanding indebtedness of about Thirty-four Thousand Dollars, and had no funds whatever with which to meet the same. There were no ores in the mine of known value; although developed to a depth of fifteen hundred feet, and with ten miles of underground workings, these workings were caved and dilapidated; mill and hoist had burned; and except for bodies of zinc-bearing refractory ores of no known value, the entire asset of the Company was represented by this worked-out and dilapidated mining property.

No process was then or is now known by which the zinc ores, or any other ores, known to exist in the mine could be profitably mined and treated. Whether such a process would ever be found was and still is wholly problematical, for notwithstanding great progress in the treatment of zinc ores in the Butte Camp has been made in recent years, the Alice ores, being entirely different and quite more refractory than other zinc ores in the Butte Camp, have not yet been successfully subjected to treatment. To develop such a process, if indeed the same could be developed at all, would require enormous sums of money, such expenditures to be made subject to ultimate failure.

To open up the mine and equip it for prospecting and development work would have required an

expenditure in excess of Two Hundred Thousand Dollars; to work the mine and treat the ores would have required a much larger expenditure, the testimony showing that to build a mill of only five hundred tons capacity would cost approximately Five Hundred Thousand Dollars (see Tr., Vol. II, pp. 938-944).

There was no feasible method by which funds could be raised to further exploit and develop the property or discharge its indebtedness. The Company had nothing to offer upon which any reasonably prudent individual would have advanced these sums of money (see Tr., Vol. I, pp. 397-400).

The property had been thoroughly examined by skilled representatives of two of the largest zinc companies in the United States, the Empire Zinc Company and Beer-Sondheimer & Company, and after such examination the properties were offered to such companies on lease, but the zinc operators declined to have anything to do with them.

Judging from Appellants' statement of facts, touching value of Alice property, it would appear that the sole reliance of Appellants to sustain the conclusion of the Court, that the price paid for Alice of \$1,500,000 and assumption of Alice's debts, was inadequate, is that Alice ground contains copper of commercial value, and in an amount and so readily accessible that from its proceeds a purchaser could recoup a purchase price in excess of that amount and all expenditures for the recovery of the same.

The record discloses that such a contingency is, if anything, no more than a bare possibility, and wholly insufficient as a basis for an estimate of greater value of the property.

Alice is located in the silver zone of the Butte

District. Notwithstanding ten miles of underground workings, no commercial copper has ever been found therein, neither has any ever been found in reasonable proximity to this ground. If any copper is to be found therein it must be in certain veins, some of which tend towards the Alice ground, which, so far as explored outside of the limits of the same, bear copper ores only in pockets, and in their progress towards the Alice ground become either barren or change the character of the mineral contents from copper to silver or zinc.

The record is so barren of any evidence which would lead a reasonably prudent mining investor to entertain a well-founded hope that commercial copper exists in Alice ground that counsel are, and the Court must be, surprised at the contention of appellants.

Mr. Goodale, a metallurgist of repute, connected with the Anaconda Copper Mining Company or some of its subsidiaries since 1898, both in its smelting department and as Assistant Manager of the Company, and entirely familiar with the entire mining district of Butte, testified as follows:

"To my knowledge there has never been discovered a vein of copper of any kind or character in any of the Alice properties. I will say in that connection, that I looked at the report of Professor Blake to see if he mentioned occurrences of copper there in 1898, and he did not" (see Tr., Vol. I, p. 299).

Again:

"I spoke about Professor Blake's report on the copper district of Butte. He examined the Alice mine somewhere about 1885 and there is a paper he published on the silver mining in Butte. That, I think, was in 1887. Silver was the chief product of the Butte camp in 1885.

I am inclined to think that by that time copper was over-balancing the silver in value of product" (see Tr., Vol. I, p. 305).

Mr. Buzzo, Acting Superintendent of the Alice property from November, 1906, speaks of the Alice as containing a large body of lead and zinc ores (see Tr., Vol. I, p. 375). And in reply to a question as to copper in the vicinity of the Alice said:

"No, there is no ground near there that is worked for copper that I know of" (see Tr., Vol. I, p. 378).

Mr. Ryan said:

"The Alice properties are far to the northwest and outside of any territory that has ever produced copper in paying quantities" (see Tr., Vol. I, p. 392).

Again:

"The mine has been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operation" (see Tr., Vol. I, p. 398).

Mr. Corry, mining expert on behalf of appellants, to prove inadequacy of consideration for Alice properties, in speaking of these properties, said:

"Speaking from my own knowledge that is available to everybody these old claims were worked for their silver contents by the former operators, the Alice Company, and by lessees subsequent to that time. In other words, the

activity upon the Alice lode has been wholly confined to the mining of silver ores. They may carry a greater or less extent of gold—primarily for the silver contents" (see Tr., Vol. II, pp. 726-727).

Again:

"As to how extensively the Butte camp was prospected and worked for silver,—it was prospected over a greater portion of the entire district, and for several miles around, for silver, but the actual silver production,—producing properties, were confined more to this northern portion of the camp, and especially to the Alice on the Rainbow ledge, and in that vicinity and to the westerly of the ground shown upon this exhibit,—plaintiff's exhibit 1, Corry" (see Tr., Vol. II, pp. 731-732).

Again:

"I do not know of any place in the Rainbow ledge or lode, outside of in the Elm Orlu, where copper ores of a commercial character have been found. What copper they found in the Elm Orlu was in the cross vein, a southeasterly and northwesterly vein; a vein entirely independent and of a different age and system than the Rainbow system of leads, but in close proximity to the Rainbow lode, as I stated . . . I do not know distinctly of any east and west vein in this vicinity carrying copper minerals, except that it would be accidental: I cannot conceive of how such a thing could happen" (see Tr., Vol. II, pp. 748-749).

Mr. Wood, an expert upon whom Appellants apparently placed great reliance, in describing the Alice mine, said:

"I have known the Alice mine and the surrounding property since 1896. I should say, as to just what particular prominence

the Alice property has in the general geology of Butte,—it has the largest and best developed silver ledge or lode of any known in this district, and one of the largest probably in the United States; it is a lode that can be traced for a long distance,—I should say, roughly speaking, a mile, and the heart of the mineralization of that lode appears to be in the center of the Alice group; it is a very great lode, which has produced, as we all know, large sums of money in silver, and a lode which, at the time I visited it, was considered to be a probable source of zinc" (see Tr., Vol. II, p. 779).

Again, he said:

"I haven't any information that there are any profitable copper ore bodies in the Alice at present,—not any more than the zinc" (see Tr., Vol. II, p. 811).

The only competent evidence contained in the record tending to show any copper in the Alice ores is the testimony of Buxso, in which he said:

"There never were any ores left there simply because they contained copper that I know of. All the ore in the Alice contained a very small percentage of copper; about one-tenth to perhaps four-tenths of one per cent" (see Tr., Vol. II, p. 895).

Mr. Sales, Chief Geologist for the Anaconda Copper Mining Company, and more familiar with the entire Butte district than any other witness called to testify, touching this point said:

"Taking the Rainbow lode, from the presence of copper in that vein such as shown and the general geological characteristics of the lode or veins, I should consider it a possibility but a very remote probability of there being

commercial copper ore in the Rainbow Lode. I do not know of anything geological, or anything any other way that would indicate the probability of its containing copper at depth. I think the general tendency of the developments in that section up there is rather towards the opposite. I should be surprised to have commercial copper developed in any quantity" (see Tr., Vol. II, pp. 910-911).

Appellants seem to rely, as an element of great value, upon the possibility of certain northwest and southeast veins, known in the Butte District as the Blue Vein series, passing northerly and westerly into the Alice ground, and after passing within the surface boundaries of the same, bearing copper ores. It is practically conceded throughout the record by all the witnesses that, so far as known, the Rainbow Lode bears no copper ores. The contention of appellants that the Alice properties have a potential value on account of copper ores contained therein, was, however, practically disallowed by the Court, the Court stating in its opinion that such contention was of little consequence.

Chief among the veins mentioned by Appellants' witnesses, belonging to the Blue Vein series, are the Jessie and Edith May. No witness ventures the assertion that either of these veins passes through or into the Alice ground. All witnesses admit that these veins are pockety, and throughout long distances barren of mineral value. No witness ventures the assertion that even if passing through Alice ground there are any indications that any of such pockets of valuable copper ore would be found therein. It is uncontradicted that as these northwest and southeast veins pass northerly and westerly they become leaner in ore values, and instead

of continuing to bear copper ores, such ores as are found are of the silver and zinc variety.

All the knowledge now available in reference to these veins was available to the complainants in this cause when, in 1906, they optioned to John D. Ryan a majority of the stock of the Alice Company on a basis of Six Hundred Thousand Dollars, or thereabouts, for the entire Alice property, with the sole exception that in the Badger State claim the Edith May vein has, within recent years, upon vigorous development, produced more copper than it did theretofore.

Any development of copper ores in either of these veins can hardly be said, under the evidence, to be in close proximity to the Alice property, and even if this were true, in the absence of any substantial proof that said veins continue ore-bearing into the Alice ground, it would be of no consequence. Alice lies within the silver district. The copper district of Butte is also well-defined. Every ore-bearing zone has its limitations. If close proximity were, after forty years of vigorous development in a mining camp, any substantial evidence of contiguous values, then the history of mining ventures should be rewritten.

Mr. Corry, expert on values for Appellants, did not think sufficiently of the possibility of any of the Blue Vein series extending into the Alice property, and bearing therein commercial copper ores, to consider such possibility as a basis for his arbitrary estimate of the value of the Alice property at Three Million Dollars.

Mr. Goodale says:

"I do not know of any extension northerly in the Jessie vein and in the Badger State. * * *

The Alice properties lie northerly and north-westerly of the Badger State" (see Tr., Vol. I, p. 299).

Again, he says:

"I do not know of any copper ore in the Badger State in any vein which in my opinion extends into the Alice ground" (see Tr., Vol. I, p. 300).

Mr. Ryan says:

"The Badger State claim I should say would be about one thousand feet from the Alice properties, but the Badger State workings more than that, probably two thousand feet from the Alice properties. There was an entirely different character of ore there. The ores opened in the Badger State are not zinc ores; they are copper ores with some little zinc, but copper ores running high in silver. The Lexington properties adjoining the Alice properties on the south have been worked extensively by the La France Company or one of Heinze's companies within the last four or five years. That lies between the Alice properties, and the copper-producing properties on the western end of the Camp" (see Tr., Vol. I, p. 421).

Mr. Ryan then describes the history of the Lexington properties, the attempt of Heinze and his companies to operate the same and expenditure of money thereon, and the utter failure of the Lexington to pay a profit to its operators, and the purchase of the same for the sum of Two Hundred and Fifty Thousand Dollars (see Tr., Vol. I, pp. 421-422).

The Poser mine and the Pilot Butte, mentioned in the testimony, had not made any developments that would give the Alice property any value up

to the time that the Alice property was sold to the Anaconda Company (Ryan, Tr., Vol. I, p. 399).

In speaking of the Edith May and Jessie Veins, Mr. Corry, expert mining engineer on behalf of Appellants, also said:

"As a mining engineer, I would say as to these veins, continuing until the encountering of the Rainbow lode itself, that between this point last referred to and the southern limits of the Alice property, there are a series of holes which bring this line of outcrop to within possibly 100 feet of the southern boundaries of the Alice group, and I would say that they would at least continue to the intersection with the Alice lode, and if possible would continue a distance into the Rainbow lode" (see Tr., Vol. II, p. 730).

After having given an estimate of the market value of the Alice property at the sum of Three Million Dollars, the witness said:

"All that I know about the Alice is what I got from the surface examination and surface study. I have not been underground in the Alice to any depth. I have been down 30 or 40 feet" (see Tr., Vol. II, pp. 736-737).

Again:

"The entire surface has been done over, back and forth, and has been quite thoroughly prospected. In placing my value on the property, I did not consider whether or not there still was great deposit of a silicious silver ore, a low grade which was too low grade at that time, but which could very likely be treated by a percolating or cyaniding process. I did not consider that that was a feature of it, although, of course, it occurs to me, but *I base my valuation of that property as it appealed to me upon its location*,—I considered that the Alice was

not thoroughly depleted to the 1,500 foot level on the veins there. I considered that the fact of obtaining anything above the 1,500 foot level from which I believe there exists some possibilities, would simply add to its worth. *I did not give any value at all to ore bodies that are known above the 1,500 foot level*" (see Tr., Vol. II, p. 740).

Again:

"It is my belief that there are great possibilities as to the treatment of what may have been too low grade silver ores for them to treat at that time. I do not know today of any ores above the 1,500 foot level in the Alice properties that I could say I could treat profitably at this time by any process" (see Tr., Vol. II, p. 741).

Again:

"I do not know of any place in the Rainbow ledge or lode, outside of in the Elm Orlu where copper ores of a commercial character have been found. What copper they found in the Elm Orlu was in the cross vein, a southeasterly and northwesterly vein; a vein entirely independent and of a different age and system than the Rainbow system of leads, but in close proximity to the Rainbow lode, as I stated" (see Tr., Vol. II, p. 748).

Again:

"I do not despair of finding copper ore in the Rainbow lode itself. The Rainbow lode has been developed from the Rising Star on the west on through the Alice ground to the Elm Orlu, and I carry it to the Black Rock, and the Alice is 1,500 feet and the Moulten 1,500 and I know of no place where copper ore has been found in the vein itself. *Somebody has to finally find something in that vein, and I do not consider that sufficiently deep development*

has been done in that vicinity to tell the last story. This then is classed not as copper bearing but as a silver vein. It has a different geological formation than the copper veins of Butte" (see Tr., Vol. II, pp. 749-750).

The witness then states that the country adjacent to the Alice has been pretty well developed underground, and describes the work on the Pilot, the Currie and the Blue Wing, and declares that he does not know of any place, either in the Alice ground or outside of it, that copper ore has been found in any of the veins referred to therein; neither in the Currie nor the Blue Wing nor the Chief Joseph nor the Lexington. The location of these different properties will be understood by reference to the maps introduced in this cause (see Tr., Vol. II, p. 750).

Speaking of the northwest and southeast veins collectively, including the Edith May and Jessie veins, the witness said:

"The fact as to whether or not some other vein is pointing towards the Alice ground, and is an ore producing vein or a parallel vein, or a spur that never produced, would certainly be a factor in determining its value, *but my approximation was placed only incidentally upon the possibility of these northwest veins going up.* On my exhibit 2 Corry, I carried that Jessie vein right on through the Rainbow series, and show it a considerable distance to the north, the scale of that map being approximately 400 feet to the inch; and carry it about 1,250 feet northerly of the Rainbow lode series. I believe that these northwest veins do, or *will be found*, to go through the Rainbow ledge, with an individuality beyond. *I have never seen this vein doing that.* I cannot say

where there are any workings north that would justify the 1,500 foot projection of the Rainbow lode series" (see Tr., Vol. II, pp. 753-754).

Again:

"All these northwest-southeast veins carry their ore in shoots,—are pocketed, as the miners call it. They do not have the regular ore bodies that the old east and west, the Anaconda system, has. The mineralization is more concentrated; and *you find these barren places in the veins for long distances both on the dip and strike generally.* When you get away from where you find your shoot, it is simply a question of possibility of finding another; there being nothing there to indicate whether the shoot is there or not. * * * I do not know of any copper ore of my own knowledge that has been mined from the Jessie vein" (see Tr., Vol. II, pp. 753-754).

Again:

"I sketched a projection of the Edith May north to show the turn there of both the Jesse and Edith May, *and as to whether or not the veins that I do pick up in close proximity to the Alice are absolutely, as stated, or not, I could not say,* but the mere fact exists that at those points are veins having their general strike and of considerable prominence" (see Tr., Vol. II, p. 756).

Again:

"I have heard it uncontradictedly stated that the Badger State gets its ore from an old east and west vein called the Badger State vein. Directly speaking it is not an east and west vein, it is north 76 west, passing through the Badger discovery. *I do not know its course as to whether it would go through the Alice ground at all. I have never studied that out on the surface*" (see Tr., Vol. II, p. 756).

In reference to the history of the Butte Camp, as to copper being obtained at depth, the witness said :

"Generally speaking the history of the Butte veins is that they carry silver on the surface, and you got copper at depth,—I mean the copper veins. I do not mean the Rainbow lode, the Black Chief lode, or the Nettie, or the Emma. I do not mean the true silver veins, they carry silver from the surface, and do not carry copper so far as they have been developed" (see Tr., Vol. II, p. 757).

According to this witness, the nearest ore-bearing copper in commercial quantities is 3,200 feet from the Alice ground. On page 769 of Vol. II of the Transcript he says :

"I should say it is about 1800 feet from the Badger State shaft to the point nearest eastward that I know is profitably worked. It is about 1200 or 1400 feet westward from the Badger State shaft to the Alice ground."

Beginning on page 757 of Vol. II of the Transcript, the witness Corry states how he arrives at his estimate of the value of the Alice property. Therein it is disclosed that he did so with no knowledge of underground workings in the property, 10 miles in extent, with no knowledge of the character of the ore disclosed in these workings, with absolute knowledge that no known process had been discovered for treating these ores, with no knowledge that any copper-bearing veins pass through the property, and with no knowledge of the property whatever except a surface examination. This story makes most interesting and entertaining reading, but leads the mind irresistibly to the conclusion that the value placed upon the property of Three Million Dollars by the witness is alto-

gether speculative; that it is based upon nothing worthy of consideration by the court; that it is a simple fancy of an idle dreamer, justified only by a fevered imagination or an elastic conscience; and that the estimate of any other amount, however large and fanciful, would have been of equal weight; in short that the arbitrary estimate given by the witness is worthy of no consideration whatever in view of the premises adopted by the witness in arriving at his conclusions.

Witness Weed, a mining engineer greatly relied upon by the Appellants, also gave an estimate of the Alice ground as being of the reasonable market value of Three Million Dollars. This estimate of the witness is admitted by him to be purely arbitrary. Indeed, he asserts that under the conditions existing in the Alice property every estimated value must be arbitrary. Therein he disagrees with the learned District Judge, who, in his opinion, held that an arbitrary price is *prima facie* inadequate.

The estimate of this witness must be absolutely discarded by the Court, for the reason that the basis of the same was largely matters of which the witness had no personal knowledge, purely hearsay and incompetent, all of which were duly objected to in the court below, the objections thereto being overruled.

This fact vitiates and renders wholly incompetent the estimates of value which seemed to be so persuasive with the District Court, and requires this Court to disregard the same.

The witness was allowed to testify, against objection, as to general information which he had obtained and statements which are contained in the reports of the North Butte Mining Company, in relation to the large production of copper from

the Edith May and Jesse veins (see Tr., Vol. II, p. 782). And also in regard to the position of the Edith May vein on the surface (see Tr., Vol. II, pp. 782-783).

In reference to the underground workings of the Alice and Moulten properties, the witness was allowed to, and did, rely, against the objection of the defendants, upon certain maps which he extracted from the official report of the Alice Company for the year 1884, and also on reports given by the different superintendents to the presidents, and reports issued by the presidents, and based his judgment upon this, and he says that he based his judgment as to the value of the property, so far as that factor went, upon this evidence (see Tr., Vol. II, pp. 784-785).

It needs no argument to convince the court that maps made in the year 1884 for the use of the Alice Company, extracted by this witness from the files of the Company, and reports of its superintendents made to the presidents of the company, are hearsay, self-serving declarations and wholly incompetent as against the Anaconda Copper Mining Company in this suit, and wholly incompetent as a basis for the judgment of this witness in reference to the value of this property.

The witness, against the objection of the appellees, was also allowed to testify as to certain conversations which he had with a man by the name of Sherwood, touching the success which the said Sherwood had had in connection with the treatment of the zinc ores belonging to the Butte & Superior Copper Company. (These ores are shown by all of the testimony to be of a different character altogether from the zinc ores of the Alice.) (Tr., Vol. II, pp. 788-789).

The witness, conceding that he was not a metallurgist, but only a mining engineer, that he could not speak as an expert in metallurgy, was allowed to give his opinion that the zinc ores of the Alice property could be successfully worked by existing processes. In determining whether or not this could be done, the witness was allowed to use information which he said he obtained from one Walker, as to the results of certain tests on a shipment of ore which Walker declared he had caused Buzzo to ship to Salt Lake City in the year 1902, which the witness stated he verified as far as possible by the shipping returns and the assay receipt, that is, checking each step in the process by the papers submitted. All this against the objection of the appellees that the same was hearsay and altogether incompetent (Tr., Vol. II, pp. 789-790).

The witness was also allowed to state from these unidentified papers or contents of the same, in so far as it related to the copper contents in the ores in the Alice mine, namely, that the sample about which witness was testifying, and about which he had no personal knowledge, had 1.4 per cent. of copper, and that the old records showed an average of better than 1.1 per cent. copper; and having so stated the witness used this as a basis for the conclusion that copper ore might be found in the Rainbow Lode, but the witness did not state that there was any probability of copper ore being found in that part of the Rainbow Lode included within the Alice group (see Tr., Vol. II, pp. 790-791).

The witness, in connection with his conclusions of value of the Alice property, was allowed to base such estimate upon hearsay and incompetent evidence of the presence and value of zinc-silver ores,

although personally he had no knowledge of the existence or value of such ores.

Both this witness and also Corry, were allowed to use Exhibits V, W, X, Y and Z, pages 450-459, Buzzo's letters to Walker, as a basis for these estimates. These letters were clearly hearsay, self-serving and incompetent as against the defendants, and were duly objected to.

Having thus fortified himself by these hearsay statements, and treating the same as evidence in the cause, and as a basis for his estimate of the value of this ground, and having added thereto another hearsay element, namely, the values placed on adjoining and less desirable claims, of which there was no testimony then or thereafter produced in the case, the witness stated specifically that the value of this property was three million dollars. On page 791, Vol. II of the Transcript, he said:

"From my study of the ground, I would say that the value of that property in the early part of May, 1910, giving consideration to the values placed on the adjoining and less desirable claims, and to the other factors, which I have mentioned, I would state specifically, three million dollars."

This estimate, for the reasons hereinbefore given, becomes utterly incompetent, is wholly valueless to the Court, and should be discarded.

A further inspection of the testimony of Weed, commencing with page 801, Vol. II of the Transcript, shows further references to the hearsay and incompetent testimony touching the shipment of ores from the Alice mines heretofore referred to. Among other things, after giving the pretended metal contents of such ores, he says:

"I have been going on the assumption that the zinc ores would carry 1.1 say, per cent of

copper, which would be over twenty pounds to the ton. That would be an important factor in my conclusion as to the value of the ores in the Alice mine."

Let it be noted that no competent proof was ever introduced which would authorize Mr. Weed to use the results of that shipment as a basis for an estimate of value, or authorize the court in calling the same to its assistance in arriving at a conclusion upon this important point.

The papers purporting to show returns of metal values in this shipment of ore were, against the objection of the Appellees that the same were wholly hearsay and incompetent, introduced in evidence (see testimony of Walker, pp. 835-844, Vol. II of Transcript). This evidence was entirely secondary: they were returns that smelting and sampling works had made to Walker. No effort was made to introduce any proof touching the correctness of these returns, or whether they truly represented the value of these ores. Moreover, had such proof been introduced, the evidence was clearly incompetent and of no probative force, for the reason that there was not a particle of evidence that this lot of ore represented the average of the ores disclosed in the Alice workings or a correct or true sample thereof, and from aught that appears in the record, this may have been a picked shipment, taken from a particular place in these workings, and may have been all of this character of ore to be found there. Indeed, it does not even appear by any competent proof, of any nature whatsoever, that this shipment of ore came from the Alice properties.

Upon this incompetent evidence, coupled with Mr. Weed's conclusion (also wholly incompetent

because he denied, Tr., Vol. II, page 803, that he was a metallurgist or permitted himself to be so considered) that such ores could be under known methods treated successfully, Mr. Weed, when pressed for the elements of value aggregating Three Million Dollars, said that he considered the ores disclosed in the Alice workings to be of the value of One Million Dollars, and this was the only specific element of value which he would estimate in dollars and cents. As Corry, so Weed. His reasons for arriving at a Three Million Dollar valuation are so fanciful, contradictory and equivocal, that it is inconceivable that the court should allow such estimate, a predominating influence touching a finding upon this point.

When brought to bay, the witness said:

"As to the speculative nature of my elements of value, when it comes to pinning them down to actual dollars and cents, I cannot say that this element has so much, and that element so much; if I would fix the whole at so much, upon anything definite in dollars and cents,—it affects the values of the claims basing it roughly at say one hundred or two hundred thousand dollars a claim, that would give me a rough estimate; adding the value of the shaft if it were in good condition would be another element, and the large bodies of zinc ores another; so we have the various elements without placing any specific value on any one. As I recall it, the Alice has about twenty-two claims, and some of those fractions have a strategic value which gives them value far in excess of the mere acreage. You have less than three full claims on the Rainbow Lode, and the others are of less importance; for instance, I understand the Little Maggie which was a good vein and profitable to the 700, *but any valuation is always arbitrary*" (see Tr., Vol. II, p. 821).

In this connection, and as apropos to any probable value which the Blue Vein Series, known to be copper-bearing, would give to the Alice property, even though it had been established that any of them known to bear copper values passed into the Alice ground, the following statement of Witness Weed is significant:

"It is true that the Jesse vein and the Edith May vein, as they go to the northwest there, their mineralization is changing and becoming more like the silver mineralization—the contents" (see Tr., Vol. II, p. 814).

Mr. Kelly testified:

"On the other hand, the properties of the Alice Company were rather remotely situated, northwesterly from the copper district, or outside of what was known at that time, or in fact still is known, as the boundaries of the copper district" (see Tr., Vol. II, p. 853).

Mr. Gillie says:

"Many of these northwest and southeast veins (Blue Vein Series) are simply fault fissures that so far as disclosures have been made, contain no commercial ores of any account. Others have produced commercial ores from pockets or shoots found occasionally in the vein" (see Tr., Vol. II, p. 883).

Referring to the Edith May vein in the Badger State, Mr. Sales says:

"As to the condition of the Edith May vein in its developments from the Badger State shaft, and particularly westerly from the section of the Badger State shaft as to giving favorable promise of occurrences to the west, the unfavorable condition is that the ore shoots themselves are beginning to fail in copper

While you find the ore shoots there, the ore is the same as in the other veins. Instead of being a copper ore, it is going to be an ore made up of zinc, quartz and iron. The copper is failing going to the west. I mean the mineralization. No, they are not commercial. I don't know just what would be the best term. You could call it a mineral shoot or a shoot of mineral deposited in the vein. I have made a general observation on all of these veins, that as you go outward from the main copper area you get into veins which are more zincy; that is, there is a transition from one end to the other. Starting in the Alice country, both the northwest veins or the blue vein system and the old Anaconda copper systems consist of the silver vein minerals, manganese, quartz and iron. That is practically all, and then when you get into that district it does not make any difference whether you are mining a northwest vein or east and west, the mineralogical character is very similar" (see Tr., Vol. II, p. 918).

Again he says:

"I do not know of any vein that points on its strike to the Alice ground from the east or southeast or the general easterly direction or that side that gives promise or looks favorable to the finding of ore beneath the Alice surface. I do not know of anything coming in from the other side, the Silver claim side, that would have any particular bearing on the Alice. They are simply veins which are regarded as silver veins, the same as all that country up there. I don't know anything of any particular importance. Outside of the low grade zinc ores that have been referred to repeatedly I know of nothing in the Alice ground or any of it that would give it any tangible value, that you could give it as a mining engineer, except a remote probability or possibility of copper. It really hasn't any

great importance. I could not as an engineer place a value on it. It is purely speculative; very much so" (see Tr., Vol. II, pp. 920-921).

Referring to the Blue Vein series, including the Edith May, Jesse and other veins of that character mentioned in the testimony, Mr. Gillie says:

"Taking the veins that point towards or from any of the Alice ground, I would say they are very unfavorable going westerly towards the Alice ground, of finding ore in the Alice ground. There is nothing on any of them that would indicate to me the probability of their carrying ore in the Alice ground, except that there are productive veins in the country that continue on. There is a possibility but not a probability. I could not, as an engineer, place any value on the Alice ground because of that condition, because those veins are pointing in that direction, having in mind the developments which are upon the veins" (see Tr., Vol. II, p. 935).

All the testimony in the record, save and except the incompetent testimony of the witness Weed, heretofore referred to, shows conclusively that the silver-zinc ores disclosed in Alice ground were, at the time of the sale, and continued to be up to the time of the trial, of no commercial value whatever. They are of an entirely different character from the zinc ores of the Butte & Superior, Elm Orlu, and other zinc ores in the Butte District which, after many years of experimentation, are being successfully worked by those companies, and so refractory in character that notwithstanding the marvelous progress made in the art of metallurgy there is no known process by means of which they can be made so.

Subsequent to purchase by the Anaconda Com-

pany, two of the greatest zinc producing firms in the world thoroughly sampled and experimented with these ores, with a view to determining their utility and obtaining leases upon the property, without success. The Montana Zinc Company at one time erected a plant of considerable magnitude and carried on an intelligent effort to successfully treat the Alice ores, but the result was a failure (see Tr., Vol. II, p. 939, Gillie; Ryan, Vol. I, pp. 419, 420, 429).

The defendants caused the ores in the Alice to be thoroughly sampled, assayed and treated in order to determine their value, and the possibility of successfully reducing them (see Tr., Vol. II, pp. 888-900, Buzzo; Febles, 903-908). These samples were turned over to James L. Bruce, a metallurgist of high repute, who, after many years of experiments upon the Butte & Superior zinc ores, had attained a satisfactory method for their treatment, and the result of his tests, together with his conclusions as to the commercial value of the ores in the Alice Mine, is found in the Transcript, Vol. II, pages 864-877. Speaking of his tests, he says:

"Those tests were necessary in order to determine whether the ores of the Alice could be treated profitably by any known processes. I found it was a very difficult ore to treat under any known process, for three reasons or four; a great deal of the mineral concentrates into the fines in crushing, wherein it is more difficult to separate the different minerals, in fact practically impossible to separate the iron into the zinc to any marked degree; I found also that the silver did not concentrate into the lead concentrates, but that the lead concentrates ran practically the same as the crude ore; I found that a large part of the mineral was finely crystalline, so that it could not be filtered with-

out fine crushing, and I think I have covered the principal difficulties in connection with the concentrating. I found in reducing those ores, that practically all of the silver values go into the zinc concentrates, not all, but a very large portion of them. On the ore that was treated, the ore would have no value either in the zinc ore or concentrates on any new process (see Tr., Vol. II, pp. 865-866). * * * My opinion is very distinct that the ore of the character of which Mr. Febles gave me cannot be treated at the present time by any known process or known method. There would be considerable margin between the cost of handling it and what you would realize from it at the present time (see Tr., Vol. II, pp. 867-868). * * * From the appearance of the Alice ore and my experience in handling it, I would say it is quite dissimilar to the Butte & Superior ore. There is a great deal more lead in it, and a great deal more iron. It has iron pyrite. In the Alice ores, judging from the samples I had, the silver does not concentrate into the lead concentrates. In fact, rather the reverse, while in the Butte & Superior ores, the concentration of silver into the lead concentrates is quite marked, the silver in the lead concentrates being of value, and in the case of the sample from the Alice there is no value in the zinc concentrates, while in the Butte & Superior ores, the silver, such as can be thrown into the lead concentrates, is of considerably more value than the same amount of zinc concentrates would be (see Tr., Vol. II, pp. 868-869). * * * I regard the zinc ores in the Alice mine as altogether speculative in value. I consider that they may have some future value (see Tr., Vol. II, p. 874). * * * I do not know of any process now that is even close to perfection to treat those ores, that would make them commercial. I cannot conceive of any tonnage being mined there that would be profitable, figuring them upon the

basis of treatment of a tonnage of 500 tons a day or even a thousand tons a day" (see Tr., Vol. II, pp. 875-876).

Quite significant, as touching the value of this property, is the fact that in the year 1905 or 1906 the Walkers of Salt Lake City, who had the largest interest in the property since the year 1880, and were men of very great wealth, together with others, optioned a majority of the stock of the Alice on the basis of \$1.50 per share, or of \$600,000.00, for the property, and this stock was finally acquired upon that basis by the Butte Coalition Company. Intermediate this date and the sale of the property to the Anaconda Company, nothing of consequence had been developed, either in the way of the treatment of the Alice ores or in the development of the ground, which would add to its known value. It is true that the Badger State mine had produced more abundantly of copper ores than it had theretofore, but this is of no consequence in light of the testimony in the case and it is also worthy of comment in this connection that the thirty thousand shares of Anaconda stock, during the four years from the date of the sale to the date of the trial of this suit, yielded more income to the Alice stockholders than was ever yielded by the Alice properties, save and except alone the year of 1880. As to this point Mr. Gillie says:

"As to the history of the dividends of the Alice Company, the larger portion of that was paid in the first fourteen years, 1880 to 1894, although some dividends were paid in '98, the total dividends amounting to one million and seventy-five thousand dollars. For the years 1910, '11, '12 and '13, the Anaconda Company has paid about forty millions of dollars, nearly equivalent to ten dollars a share on the thirty

thousand shares of Anaconda the Alice Company owns, \$300,000.00. There was forty millions paid in that period, and had the Alice accepted this proposition, they would have been doing better in four years than they did in any other period of its history, even in 1880, so far as returns are concerned" (Tr., Vol. II, p. 936).

More significant is the fact that late in 1915, under most favorable auspices, at public auction, no bidder could be found for the property at a price exceeding the consideration paid by the Anaconda Company.

IV.

The corporate business of Alice had become unprofitable and could not be carried on by the corporation; there were insufficient funds to continue the business and no money with which to pay existing indebtedness. The corporation was in failing circumstances and, in so far as its financial condition affected its business prospects, was in fact insolvent.

The facts touching the history, business failure, financial condition and inability of Alice to carry out the purposes for which it was organized are quite fully disclosed in subdivision III next preceding, to which the court's attention is particularly invited, insofar as it affects the question here

involved. To repeat them under this subdivision is unnecessary.

In addition thereto, the Court's attention is invited to the testimony of Mr. Ryan (Tr., Vol. I, 397-398), in which he said:

"There had been no operations on the Alice properties, excepting leases, since 1893. After the Butte Coalition Company acquired control of the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct company operation, except taking care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs, we could not see where we were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there had never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations."

And Transcript, Vol. I., page 400, where he also said:

"The Alice Company was without means, was in debt, had nothing in its plan of organization that permitted raising the money except to mortgage the property and attempt to sell bonds, and I had never considered that

we had anything upon which we could base representations of the value of the property that would warrant anybody in loaning us a large amount of money."

V.

The evidence fails to disclose any violation of the Sherman Anti-Trust Law in connection with the acquisition of the Alice properties, or otherwise, but expressly and affirmatively shows to the contrary.

The Amalgamated Copper Company was organized in the year 1899, for the purpose of acquiring the stocks of certain mining companies operating in the Butte District. Pursuant to its organization, it immediately acquired a majority of the stocks of certain of these companies. Its original capitalization was Seventy-five million dollars; subsequently, this capitalization was increased to One Hundred and Fifty Million Dollars, and a few years after its organization it acquired a majority of the capital stock of certain others of the mining companies in that district.

There is not a scintilla of evidence in the entire record showing that at the time of its inception, or at any time thereafter, it was organized for any evil purpose whatsoever, except the statement of one Thomas W. Lawson touching certain conversations he claimed to have had with Henry H. Rogers prior to the organization of the Company,

which will be noticed further in the argument hereto appended.

The conduct of the Amalgamated Copper Company, as a purely business venture, from the date of its inception to the date of this trial, appears from the record to have been entirely unobjectionable.

Among the companies controlled by the Amalgamated Copper Company was the Anaconda Copper Mining Company, a corporation organized and existing long prior to the formation of the Amalgamated Copper Company. Amalgamated owned a majority of this stock. Anaconda was the largest operating company among the companies controlled by Amalgamated.

Early in the year 1910 it was decided that the physical properties of the different companies controlled through stock ownership by Amalgamated should be consolidated. Reasons essential to the very life of these mining companies and to their continued production of copper ores impelled, if in fact they did not compel, this union of physical properties. These reasons are so pointedly stated by Mr. Kelley, on pages 311-313 of Vol. I of the Transcript, that we feel justified in quoting therefrom somewhat at length:

"I will say that the causes which led up to and resulted in the consolidation were, I think, three primarily. The first was due to the fact that a part of the mining companies operating in Butte had reached the point *where they could no longer produce their ores at a profit*; that condition was the result of a necessity of operating separate, independent organizations, running separate plants and hoists, maintaining separate equipment, and making their own individual development to the various ore bodies, owned by these different companies.

The result was that the overhead charges were eating up a large part of the profits, and, as I say, with some of the companies it was rather a close proposition, and a close proposition so far as certain territory was concerned. It would be to the best interests of all if a plan of organization could be perfected by which the mining ground that was contiguous to one company or another as the case might be, might be worked without the necessity of each company making its separate individual development. In other words, it seemed like a waste and an unwise expenditure of money to require one concern to equip a surface plant to maintain it separately, to run up to a line and stop at the end of its property, at the end line of its property, whereas its development, its shaft, its crosscuts, its laterals and its surface equipment, were completely adequate to enable that company to proceed and take out the ore and to require another company operating the property contiguously to have its separate plant, and its separate development, and run up, say, to the other side and stop, at its line. Now, that was one cause. The second cause, or the reason that led to this consolidation, was the increasing number of underground mining conflicts that could not be equitably and legally adjusted as between those different companies without the expenditure of an enormous amount of money, from which no good could come. In explanation of that I want to say that in certain districts in Butte, the prospecting development had shown a large number of veins that were not profitable or productive near the surface. Now in order to determine absolutely the ownership of those veins, it would be necessary for the different corporations, owning them separately, to have developed the apex by raising through an absolutely unprofitable portion of the vein to reach the apex, and then opening up the apex, and disclosing it with reference to the exterior bound-

aries of the different mining companies or claims owned by the different companies. All of that work would have been dead work; it would have cost a large amount of money and as I say, would not have been productive so far as anybody realizing from the actual doing of the work. The third reason that led to the consolidation, was the desire to so consolidate these properties that the very heavy burden, the exploration and development might be carried on for the joint benefit of all of the different companies. For instance, these properties lay—I am not speaking, with reference to the Alice properties, because that was an after thought, I think it had no part in the original consolidation—but often times property lay contiguous, the property of one company was contiguous to the property of another company. Now, it cost a great deal of money to prospect and develop and open up these mining claims, and there was not any fair or equitable way in which that charge could be distributed among the different companies. If the Anaconda Company, for instance, had begun an extensive exploration, and found a vein, although it might have been profitable for the Butte & Boston Company, there was no way of dividing the expense, and it was the different complexities that came about in the operation of these different mining companies as separate units that led to the consolidation of the physical properties. I think that is a fair statement of it."

Again, on page 314, Vol. I of the Transcript, Mr. Kelley says:

"If twenty different companies operated at Butte, independently the expense would be immeasurably greater than if one company operated all of them, and a good many of them could not be operated at all."

And again, on page 315:

"The economies in operation have necessarily been great in order that operations may be carried on at all."

Shortly after the consolidation and purchase of the physical properties of these companies by the Anaconda Copper Mining Company, the Anaconda Company also acquired certain properties belonging to W. A. Clark, known as the Clark properties, and also acquired the Alice properties—the acquisition of the Alice property was, as stated in the foregoing by Mr. Kelley, an after thought. The continued acquisition of mining properties by the Anaconda Company was absolutely essential in order to continue its life. It was carrying on its mining operations at a rate of from ten thousand to fourteen thousand tons a day. Necessarily, the result was depleted ore reserves. Notwithstanding its acquisition of mining properties, in the year 1910 the ore reserves of the properties controlled through Amalgamated were not as great as they were in 1899. On page 942 of Vol. II of the Transcript, Mr. Gillie says:

"Every mine had an end, and in order to prolong the life of a mining company it is necessary to acquire additional property. That would be the first thing. Since 1899 the Amalgamated Copper Company (Anaconda) has been mining ore at the rate of about eight to ten thousand tons a day, and for the last seven or eight years we have been mining at the rate of thirteen to fourteen thousand tons a day. As to the comparison between the depletion and the acquisition of ore deposits since 1899, in the amount of copper they would control, well, no, they haven't added as much in the way of ore reserves as they have exhausted

during that period. * * * I am afraid the Amalgamated has not kept pace with its production. It has exhausted its resources so far as its metals produced are concerned."

The United Metals Selling Company was incorporated about 1899. At that time it took over the business of Lewisohn Bros. as a going business, it engaged in the selling and distribution, in the markets of the world, of the copper production of such of the Butte companies as were controlled by Amalgamated, as well as other of the Butte companies, and also of copper produced elsewhere in the United States.

The stock of this Company was acquired by Amalgamated in 1911. It was a legitimate business enterprise, and it was only through it, or some like company, that the copper production could profitably be disposed of. The necessity for the distribution of copper in this manner is made apparent by the testimony and the character of its operations as touching producer and consumer, its selling of copper being actually from the producer to the purchaser, is disclosed by Mr. Ryan, pages 408-10, Vol. I of the Transcript, and by Mr. Evans, page 282, Vol. I of the Transcript. Touching the necessity for organization of this character, Mr. Evans said:

"The reason for a metal selling agency is that it is almost necessary to have a large amount of copper at your disposal, have it at different places in the world, have it marketable and ready for delivery. The metals selling agency sells at the point of delivery. I would say that it is necessary to have an organization that can be kept in constant touch with the conditions that affect the price of copper all over the world. It would be im-

practical and very difficult for independent or separate producers to maintain such agencies."

Neither the Amalgamated Copper Company, nor the Anaconda Copper Mining Company, nor the United Metals Selling Company ever controlled either the sale or the production of a major portion of the copper production of the United States alone, and the proportion of the world's production controlled by them, or either of them, was relatively small. Neither did the entire Butte district, in the year 1899, or at any time thereafter, produce a major portion of the copper produced in the United States, and the relative proportion between the copper produced in the Butte Camp and the production in the United States, as well as in the world at large has, since that date, constantly decreased.

From the record, it does not clearly appear what part of the copper production of the United States, or of the world, was controlled by the Amalgamated, through stock ownership, about the time it came into existence, and after it acquired the control of the Boston & Montana and Butte & Boston Companies. From a mass of statements by counsel, and incompetent testimony, it would appear that probably about thirty-five per cent. of the copper of the United States, and about one-fifth of the copper of the world, was produced by these stock-controlled companies (see Tr., Vol. I, p. 290; Vol. II, pp. 713-714). This is, however, not very material, for it does appear from other more or less competent testimony, but the only testimony which Appellants deemed it essential to introduce, that in the year 1910 the copper production of the United States amounted to 1,086,151,430 pounds; that the

total copper production of Montana was 288,449,425 pounds. From the Montana production there must be deducted, as produced by independent producers, at least 52,000,000 pounds (see Tr., Vol. I, pp. 291-292), leaving the production of the Anaconda Copper Mining Company, after it had taken over the physical properties belonging to Clark, the Red Metal Company, the Butte Coalition, and all the physical properties of the companies which had theretofore been controlled by Amalgamated, through stock ownership, at the amount of 232,449,420 pounds, being only twenty-one and one-half per cent. of the production in the United States, and a much smaller per cent. of the world's production; and it is worthy of note that ever since the inception of the Amalgamated Company; the proportion of copper produced by the companies controlled by it, through stock ownership or otherwise, to the production in the United States, and in the world, had been, up to 1910, and ever since has been, constantly decreasing.

In 1910, the United Metals Selling Company handled from one-fourth to one-third of the copper production of the United States (Tr., Vol. I, pp. 408-409).

The evidence not only fails to show that either the Amalgamated or the Anaconda Company has controlled the price of copper in the markets of the United States or the world, or has made any excessive or unreasonable profits, or has indulged in any discrimination in prices to destroy competitors, or in fixing of prices, or has limited its output, or has treated unfairly any others engaged in the copper business, or indulged in unfair business policies of any kind, or unfair treatment of employes, or has monopolized any commodity necessary in the

mining, production and reduction of copper ores, or has controlled to any extent transportation facilities, or has attempted by unfair methods to prevent competition, either in the production or sale of copper, or ever did any act or thing, or attempted to do any act or thing injurious to the public welfare, but the evidence distinctly shows to the contrary upon each of the foregoing. The testimony shows that the Alice properties acquired by the Anaconda Company are neither actually nor potentially copper producers. This point is thoroughly discussed in subdivision III above and the testimony upon the same will not be here repeated.

VI.

Findings of District Court.

(a) The Court in its decision refrains from expressly deciding the questions raised in reference to the Sherman Anti-Trust Law, and decides in effect that complainants cannot rely upon same for the purpose of rescinding sale of Alice to Anaconda.

(b) That the Alice Company was ripe for dissolution and distribution of its assets to its stockholders; that it was under no obligations to further borrow money to carry on its business, and that under the common law the majority of the stockholders had the right to sell and dispose of its property.

(c) That on account of unity of control between Alice and Anaconda the burden rested upon Anaconda to show that the price paid for the property was adequate, that this burden had not been dis-

charged and that the consideration paid therefor was adequate; that an arbitrary price was *prima facie* inadequate; that there was no market value for such a property as the Alice, and that the price of such properties is in any event purely arbitrary.

(d) The Court seems further to have found that while the Alice Company might have taken stock in the Anaconda Company in exchange for its property, with the view to the sale of the stock and distribution of its proceeds, that Alice could not, under the circumstances of this case, acquire Anaconda stock.

Notwithstanding these findings, the Court provided a method which, in its judgment, was sufficient to correct the error in the proceedings theretofore had, protect the rights of both the minority and majority stockholders of the Alice Company, and under certain contingencies vest title to Alice properties in Anaconda Company, all of which is disclosed in the decision and the decree rendered in this cause (Tr., Vol. I, p. 178; also 143 and 152).

VII.

Findings of the Court of Appeals.

Upon appeal, the judgment and decree of the district court was affirmed, the opinion of the Court being unanimous upon all points except the point that the sale to the Anaconda Company should stand confirmed, but upon this point Mr. Justice Ross dissented (see Tr., Vol. II, p. 989 for the majority opinion upon this point, and p. 991 for the

opinion of the Court upon other points). The Court found as follows :

(a) That the complainants could not invoke a violation of the Sherman Anti-Trust Act by the defendant, Anaconda Copper Mining Company, for the purpose of rescinding the sale (Tr., Vol. II, pp. 991-994).

(b) That the condition of the Alice Company was such as to justify, at common law, the sale of its properties by a majority of its stockholders and the winding up of its affairs (Tr., Vol. II, pp. 997-998).

(c) That under the articles of incorporation of the Alice Company, and the statutes of the State of Utah, the directors of the Alice and a majority of its stockholders had a right, irrespective of the financial condition of the Company, to sell the whole of its properties (Tr., Vol. II, pp. 998-1000).

(d) That by reason of the unity of control between Alice and Anaconda, the burden was upon the Anaconda Company to show that the sale was fair and the consideration adequate, and that this burden had not been discharged; and further found that there was concealment upon the part of Mr. Ryan, Managing Director of the Anaconda Company, of material facts known to him and unknown to the stockholders of the Alice, affecting the value of the Alice property (Tr., Vol. II, pp. 1000-1006).

(e) The majority of the Court held that the method provided by the district court for protecting the rights of both the minority and majority stockholders of the Alice Company, by ordering a sale, at public auction, to the highest and best bidder, of the Alice properties, under the restrictions

and limitations provided in the interlocutory decree, was right, and that the final decree of said district court should be affirmed (Tr., Vol. II, p. 989).

VIII.

General contentions of appellees upon this appeal.

(1) Appellees contend that upon the record in this case the findings of fact and conclusions of law upon all essential controverted questions should have been in favor of the Appellees, and that a final decree, without interlocutory, should have been unconditionally given in their favor, refusing all relief prayed for by complainants and affirming the sale of Alice properties to Anaconda.

(2) That even though the findings of fact made by the Court be not disturbed, and be held by this Court to be justified by the testimony in the case, the decree of the Court is nevertheless correct, and should in all respects be affirmed.

ARGUMENT.

I.

Introductory Statement.

We shall first discuss the questions stated in Subdivision 1 of Title VIII, that upon the record in this case findings of fact and conclusions of law, upon all essential questions, should have been in favor of the Appellees; that no interlocutory decree should have been entered, but that a final decree should have passed unconditionally in their favor, refusing all relief prayed for by complainants, and confirming the sale of Alice properties to Anaconda.

No complaint is made as to regularity of any formal proceedings by which the conveyance in question was authorized. The sale was authorized and ratified by a vote of 289,590 shares, or more than seventy-two per cent, of the total outstanding stock of the Company, as against 5,510 shares voting against the proposition. The 5,510 shares voting against the proposition were owned by Baer, Walker and Geddes, complainants herein. The stockholders' meeting was held May 27, 1910, and it was not until November, 1911, and until long after the stockholders had voted to dissolve the Alice Company, that this suit was instituted.

It is contended by Appellants that the sale should be set aside because, under the laws of the State of Utah, a conveyance of all the property of the Alice Company could not be made without the consent of all the holders of its stock; because the consideration for the sale was capital stock of the Anaconda Copper Mining Company; because of

unity of control and inadequacy of price, and because the acquisition of the Alice property by the Anaconda Company was in contravention of the Sherman Anti-Trust Law.

The circumstances under which private corporations may sell and dispose, by absolute conveyance, of all of their property, are clearly stated in Thompson on Corporations, Second Edition, Section 2429, as follows:

"FIRST: Private corporations, when expressly authorized by statute, charter or by-laws, may sell and dispose of all the corporate property;

"SECOND: Private corporations, by the unanimous consent of all stockholders, in the absence of express prohibition, may sell and dispose of all corporate property;

"THIRD: The directors and managing officers have the power to dispose of all the property where the governing statute provides that private corporations may sell their entire property;

"FOURTH: Where the corporation is in failing circumstances, or, is in fact insolvent, the directors and managing officers may dispose of all the property or make an assignment of all corporate property for the benefit of creditors;

"FIFTH: The majority stockholders may alienate all the corporate property when expressly authorized by statute, charter or by-laws;

"SIXTH: The majority stockholders, even as against the protest of the minority, may dispose of all the property when the corporate business has become unprofitable and where it would be ruinous to the corporation and the stockholders to continue the business; or, when there are insufficient funds to continue

the business and no money with which to pay existing indebtedness; *or*, when the corporation is in failing circumstances, *or* is in fact insolvent."

The Alice Company, at the time of the sale in question, had the authority to dispose of all of its property in the manner employed; (a) because it was expressly authorized by its articles of incorporation and by statute to do so; (b) because at the time of the sale the Alice Company was not, and had not been for many years, a going corporation; it did not have sufficient funds to continue its mining business and had no means of raising the same to carry on such business, and had no money with which to pay its then existing indebtedness.

II.

A conveyance of all the property of the Alice was expressly authorized by its articles of incorporation and by the statutory law of the State of Utah.

In the original articles of incorporation of the Alice Company, as shown by the certified copy of those articles introduced in evidence (see Tr., Vol. I, pp. 238-253), and as pleaded by complainants, is the following:

"The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, millsites, furnaces and reduction and refining works; to buy, sell and exchange mineral ores and bullions; to buy, lease, contract and operate roads, tramways and freight and transporta-

tion routes to facilitate the business of the Company; to appropriate, buy or sell water, water rights and ways for conducting the same; and generally, to do all kinds of business incident to, connected with or convenient for the management of a general mining business in the territories of Utah, Montana, Idaho and in any state or territory of the United States."

Section 322, Compiled Statutes of Utah, of 1907, and ever since continued in force, among other things, provides as follows:

"* * * And any corporation now existing, or that hereafter may be organized under the laws of this State for the purpose of mining, or the exploration or development of mining property, including lands bearing metal, stones, limestone, oil, petroleum, asphalt and other hydrocarbons, shall, in addition to the powers above enumerated, have the power to purchase, take on bond or lease, or in exchange, or locate, or otherwise acquire any lands, mines, options, territory, fields, or claims, and to sell, convey, lease, bond, mortgage, dispose of, or otherwise deal in the same to such extent as the board of directors may deem prudent, subject always to the provisions of the articles of incorporation and by-laws; provided, that in case the articles of incorporation do not provide for the sale or other disposition of the property of the corporation, then the act of the board of directors shall not be valid or binding on the corporation until confirmed by a vote of a majority in amount of the stock outstanding at a meeting of the stockholders duly called to consider such action of the board. When the articles of association provide that the property of the corporation may be sold, mortgaged, or otherwise disposed of by the directors or by the stockholders, sales made in accordance therewith shall be binding on the company."

It will be observed that the articles of incorporation contained no express prohibition against the sale of all the property of the Alice Company by a majority of its stockholders, and it has been repeatedly ruled that provisions substantially like those above quoted conferred this power.

Pitcher v. Lone Pine Consolidated Mining Co., 81 Pac. 1047;

Lang v. Reservation Mining & Smelting Co., 93 Pac. 208;

Traer v. Lucas Prospecting Co., 99 N. W. 290;

Maben v. Gulf Coal & Coke Co., 56 So. 607.

But, however, this may be it is clear that under these articles of incorporation and Section 320, Utah Statutes, such power is conferred upon the board of directors and a majority in amount of the outstanding stock of the company.

The provisions contained in the foregoing statute, that a mining company may sell, convey, lease, bond or dispose of its property, or otherwise deal in the same to such extent as the Board of Directors may deem prudent, subject to the provisions of the articles of incorporation and by-laws, and provided that in case the articles of incorporation do not provide for the sale or other disposition of the property of the corporation, then the act of the Board of Directors shall not be valid or binding upon the corporation until confirmed by a vote of a majority in amount of the stock outstanding at the time of the stockholders' meeting called to consider such action of the Board, provide plain, direct and unequivocal authority by the Board of Directors to make a sale of all the property of the corporation, provided the articles of incorporation authorize

them to do so. In the event of the articles of incorporation failing to contain such authority, it is provided that such sale is subject to the subsequent confirmation by a vote of a majority in amount of the capital stock outstanding at the meeting of the stockholders called for the purpose of considering such action before it becomes binding.

The foregoing statute necessarily carries with it the meaning above suggested, otherwise there would be no purpose in its enactment, and it would be without effect and without meaning. At common law, the board of directors of a corporation are authorized to sell, lease, mortgage or otherwise dispose of the property of a corporation, subject to the limitation that they cannot sell or dispose of the entire property of the corporation. It can hardly be contended that the above statute was intended as a limitation upon the power of the Board, but rather from its terms and the language employed, it must be construed to be an extension of the power already possessed. If it was intended to limit the power of the Board, it would have been idle to have suggested that the action of the Board of Directors in selling the property of the corporation was not effective unless confirmed by a majority of the stockholders, and that of itself is an extension of the common law power. It follows, therefore, if the Utah statute is to be given any force or meaning whatever, it must necessarily be held that the common law power of the Board of Directors was extended, and that with the consent of a majority of the stockholders, the directors of a mining corporation could, as a matter of fact, dispose of all the property of the same.

Language such as is employed in this statute will not be so construed as to become a grant of power

which already existed. The clear intent to extend the power of the board of directors of the corporation and of its stockholders is manifest, and the language employed well-adapted for this purpose.

Such was the view of the Court of Appeals touching this point. That Court said:

"By the Utah statute referred to, the powers of all such corporations then existing, or that should thereafter be organized under the laws of the state, for any of the purposes therein enumerated, were manifestly extended beyond the common law powers, and under its express terms, in view of the charter of the Alice Company, we do not think it admits of doubt that the Board of Directors of the Alice company, in the absence of any fraud or lack of good faith, and with the consent of the majority of its stockholders, was empowered to sell and dispose of all of the property of that corporation" (Tr., Vol. II, p. 999).

It is our contention that it is immaterial that this act was not in force at the time of the incorporation of the Alice Company, for the reason that at the time of the incorporation of that company in 1880, there was in force the following statutory provision, adopted by the Utah Legislature on February 20, 1874, as follows:

"The Governor and legislative assembly may hereafter modify or repeal this act, but if it be repealed, or if the franchise of any corporation organized under this act, shall be forfeited, the corporation may continue for the purposes specified in Section 9 of the act, to which this is an amendment."

Compiled Laws of Utah, 1876, page 232.

Subsequently, upon the adoption of the Constitution of the State of Utah, a repeal, alter and amend provision, governing the charters of corporations, was made a part of the fundamental law, and is found in Section 1 of Article 12 of the Utah Constitution.

There can be no question but that the territorial repeal provision, as above set forth, in its terms was broad enough to cover, and plainly covered, such a change in the statutory law affecting corporations as is found in section 322, *supra*, and as this subsequent act authorizing a corporation to dispose of all of its property is plainly within the provisions of the repeal act of 1874, it must be held applicable to the present situation, unless such holding would render the repeal provision repugnant to the Constitution of the United States.

It is counsel's contention, as we understand it, that because of constitutional limitations, the modifying and repealing act must be construed to have been intended to apply only to such changes in the statutory law affecting corporations as affected the contract between or the rights of the corporations as between it and the state, and cannot be construed to apply to the implied or express contracts existing between stockholders of a corporation and the corporation, or between the stockholders themselves, and that a provision, affecting the right of a corporation to dispose of all of its property would impair or seriously affect the implied or express contracts existing between the stockholders themselves or the stockholders and the corporation.

The very question herein presented was before the Supreme Court of the State of Montana upon a statute very similar to the one in question, in the

case of *Allen vs. Ajax Mining Company*, 30 Montana, page 490. In that case the constitutionality of the act of the Legislative Session of 1899, known as House Bill No. 132, providing for sale of all the property of a corporation upon a vote of two-thirds of its stock, if attempted to be applied to corporations formed before the passage of the act, was before the court for determination. The Court arrived at the following conclusion (see p. 505) :

"It cannot be said then, that the enforcement of the provisions of House Bill 132 will impair the obligation of any contract which the plaintiff entered into when he became a stockholder of this company, for the reason that the reservation of this authority to alter, amend, or repeal the law under which the company was organized became as much a part of the law of its creation as any other provision respecting it, and became a part of the charter, modifying what would otherwise have been an absolute grant (Citing 4 Thompson on Corporations, Section 5408).

"It is to be understood, too, that this reservation possesses equal vigor, whether contained in the charter of the particular corporation itself, or in the Constitution or general laws of the state under which the corporation is organized. While there may be some slight conflict in the authorities, the great weight of authority clearly and unequivocally sustains such statutes (citing many cases).

"The theory upon which these statutes are upheld is that whatever rules or regulations for the management, operation or control of a corporation which the legislature might have incorporated in the law under which the corporation was organized may afterwards properly be engrafted on its charter by virtue of this reserved power existent at the time of the formation of the corporation" (citing many cases).

It was accordingly held that the statute was constitutional.

Section 67, Thompson on Corporations, is as follows:

"But if the power to alter or repeal is reserved in the incorporating act or otherwise, as above stated (by the Constitution or a general statute), the legislature may make such alterations or amendments as it may see fit, and the judicial courts shall have no power to consider their propriety."

The view that the reserving clause is for the benefit of the State was set forth in *Zabriski vs. Hackensack, etc., Ry. Co.*, 3 C. E. Green 178; 90 Am. Dec. 617, by Chancellor Green, and the dissenting judges in the sinking fund cases took a similar view. Chancellor Green, in the *Zabriski* case, cited *supra*, concedes that the great weight of authority is against his view as to the purpose and effect of the reservation. See also on page 624:

"This view of the case is so clear upon principle that I feel constrained to be guided by it, although the weight of decisions in other states is against it."

In Thompson on Corporations, Section 90, it is said:

"The reserved power of the legislature extends not only to altering the charter, for any purpose connected with the public interests, but also to altering it for the mere purpose of changing the rights of the corporators as among themselves. This view has been taken in New York, in Massachusetts, in Illinois, in Missouri, and in other states. A necessary result of this doctrine is that the legislature may authorize any change in the organization, pur-

poses or powers of the corporations which the majority may desire, contrary to the will of the minority."

In the case of *Schenectady & Saratoga Plank Road Company vs. Thatcher*, 11 N. Y. Court of Appeals, 114, the Court was required to determine whether, under a similar reservation, a subscriber was released from his subscription by reason of an increase of the capital and the construction of a branch road in pursuance of an act of the legislature amendatory of the original act of incorporation. This change was so fundamental in character that it would have released the subscriber at the common law. The Court, by Johnson, Judge, says:

"This condition (referring to the reservation of the right to alter, suspend or repeal), is thereby engrafted upon the original constitution of companies formed under this act. The subsequent act was passed and operates under that reservation of power to the legislature. The corporate property is subject to that power by reason of the assent to its exercise implied from and by an organization under the act which reserves it. Everyone who entered into such company is aware of the reservation of power and of the possibility of its exercise, and trusts, as in many other matters he must trust, to the wisdom and justice of the legislature, that this power will not be abused.

* * * The persons who contract to take shares in a company under such an act, contract subject to the same reservation of power. The courts are bound to read their agreement with the legislative condition. They agree to take and pay for the shares for which they subscribe, subject to the power of the legislature to alter or repeal the charter of the company, and it does not lie in their mouths to complain that the power has been exercised."

The subject receives a very full and a very satisfactory discussion in the case of *Durfee vs. Old Colony & Falls River Ry Co.*, and others, 5 Allen (Mass.) 240, to which opinion we respectfully call the Court's attention, and to the many cases cited therein.

See also:

- Buffalo and N. Y. Cen. R. R. Co. *v.* Dudley, 4 Kernan 575;
- Looker *v.* Maynard, 179 U. S. 46;
- Hamilton Gas Light Co. *v.* Hamilton City, 146 U. S. 270;
- Veener *v.* United States Steel Co., 116 Fed. 1013;
- Market St. Ry. Co. *v.* Hellman, 109 Cal. 571;
- Williams *v.* Nall, 108 Ky. 21; 55 S. W. 706;
- Missouri R. R. Co. *v.* Kansas, 216 U. S. 274;
- Germer, *et al.* *v.* Triple Steel, etc., Co., 54 S. E. 509.

Under the foregoing cases it is very plain that so far as Section 322 of the Compiled Statutes of Utah is concerned, the extension of power therein conferred to mining corporations which permits a sale and disposition of the entire property, upon such sale being confirmed by a majority of the stockholders, was a constitutional exercise of the power reserved by the legislature.

The Appellants contend that so far as a Utah corporation is concerned, this question is foreclosed by the decision of the Supreme Court of Utah in the case of *Garey vs. St. Joe Mining Company*. Appellants misconstrue the scope and force of this

decision. It is not a precedent for the instant case. The question before the court was the right of a corporation, organized before the passage of the statute under which the proceedings were sought to be taken, to amend its articles of incorporation, which, as originally filed, contained an express provision and agreement between the stockholders that the stock should not be assessable, which the statute of Utah left the stockholders free to enter into at their option. At the time of the organization of the corporation the stock was expressly declared by statute non-assessable, unless the articles provided that it should be assessable, and it was also provided that it could not thereafter be made assessable without the consent of all the stockholders of the Company. The subsequent statute provided that the stock might be made assessable by a two-thirds vote of the stockholders. The court held this provision of the latter statute violative of the provisions of the Constitution of the United States, and further held that the provisions in the articles of incorporation contained a contract between the stockholders which, without violating the constitution of the United States, could not be impaired or changed. While the court did not perhaps take the broad view of the right to amend or repeal taken by many courts, it did recognize the rule that when the corporation was organized with a statute in force providing for the amending or repeal of the charter in force, that provision constituted a part of the contract between the state and the corporation, the corporation and the stockholders and the stockholders and themselves, and it plainly held that where any public right was concerned, a full right to amend or repeal was given.

Beyond this, in defining what changes could be made, the court was very guarded in its expression.

The case is easily differentiated from the present one. In the first place, the statute which we are now considering was not reviewed, neither has it ever been, by the Supreme Court of Utah, to our knowledge. In the second place, the reasoning, by means of which the Supreme Court of Utah came to its conclusions, is not at all applicable to the present one, and an analysis of the decision will clearly show that had this been the question before the court the decision would have been otherwise. In the third place, the question therein considered was whether, in defiance to the written agreement between the stockholders that their stock should be non-assessable, which agreement the Legislature expressly permitted them to make, a majority could be authorized to make the same assessable, thus compelling an unwilling stockholder to contribute more to the capital of the corporation than he had agreed to contribute, while in this case the question relates to the conditions under which the corporation may own, hold and dispose of its own property, which is of the very essence of the grant of corporate powers by the state.

The controlling elements in this decision were that by the amendment to the Utah law and the action of the stockholders, the stock of the stockholders, their own personal and private property, was rendered liable to forfeiture; that the stockholders were, in order to prevent this forfeiture, compelled to contribute more capital to the corporation than they had agreed to contribute, and that an express agreement had been voluntarily entered into between the stockholders in the articles of incorporation which could not be violated.

None of these reasons have any application to the question which we are now considering. The gist of the reasons for the decision is well stated as follows:

"It must be conceded that the full-paid capital stock became the private property of the stockholder. As between himself, the corporation, and his co-corporators, he paid the full consideration therefor, and paid all that was agreed by him to be paid. To now say that the legislature, in face of such an agreement as was here made by the corporators, may authorize a majority to compel a dissenting minority to buy it over again, not only once, but as many times as they may, in good faith, determine, by the enforcement of additional contributions of capital for mere corporate purposes, and to make a sale of their stock, resulting in a forfeiture of all their rights and equities in and to the assets of the corporation, if the unwilling members do not see fit to yield to such compulsion, *is conferring a power which gives to the majority the absolute dominion over the private property of the stockholders, permits a disturbance of vested rights and the impairment of contract obligations, within the protection of the federal constitution.*"

The Court clearly differentiated that case from the present one by the following language:

"As the authorities say, this limited liability is a part of the corporate privilege conferred by the state, and the right to repeal the franchise itself includes the right to repeal any part of, or altogether, the franchise or privilege of limited or *non-personal liability*. The immunity of such liability to the corporators existed in the first instance only because the

state had granted it to them, and what it has granted it may, under its reserved power, take away or modify."

The right to hold property is of the very essence of the grant of the state to the corporation, without which grant it could not take any title whatsoever. The state having granted this right to the Alice Company under the repealing clause of the statute in force at the date of its organization, it had the right to regulate the manner in which it should so hold it, and the manner in which it might dispose of it.

The Court also laid much stress upon the proposition that the non-assessable character of the stock was made a part of the written agreement between the stockholders by the articles of incorporation, and refused to decide whether, if it should not have been the case, the judgment of the Court would have been otherwise. Among other things it said:

"In the Rhode Island case the court seems to hold a contrary doctrine, though in that case it is not made to appear that the full-paid capital stock was made non-assessable by the original articles of incorporation, and in that respect the case may be distinguishable from the Nebraska case and the case at bar."

Again it said:

"The questions as to whether, under the enactment of 1903, two-thirds of the stockholders, or a majority, under the enactment of 1905, are legally empowered to authorize a levy of assessments on full-paid capital stock against a dissenting minority when the original articles place no prohibition on the levying of assessments, or contain no stipulation on the subject, * * * are not now before

us, confined to the question which is before us, we think the demurrer ought to have been overruled."

In holding this decision inapplicable to the instant case, the Circuit Court of Appeals, among other things said:

"It is true that at the time the Alice Company was incorporated the above quoted provisions of the Utah statute had not been enacted, but there was then in force a statutory provision of the territory authorizing the amendment, alteration or repeal of the statute under which the Company was incorporated. (Compiled Laws of Utah, 1876, p. 232), which power was subsequently made a part of the fundamental law of the state (Sec. 1, of Art. XII of the Constitution).

"Such reserved power, it was held by the Supreme Court of the state in the case of *Garvey v. St. Joe Mining Co.* (91 Pac. 369), does not extend to an agreement which the statute had permitted the stockholders of a corporation it had authorized to be incorporated to make among themselves, that its stock should be paid for in full and thereafter be non-assessable. But there was no agreement of that nature in the articles of incorporation of the Alice Company; by which as has been seen, the corporation was given the general power to buy, lease, hold, own, operate, and sell, mines, mining claims, mills, mill-sites, reduction and refining works, and to do all kinds of business incident to, connected with, or convenient for the management of a general mining business.

"There is in the powers thus conferred by its charter on the Alice company no express prohibition against the sale of all of the property of the corporation, nor is there in the case any express agreement either between the corporation and its stockholders, or between

the stockholders themselves, that such a conveyance should not be made—the most that can be claimed in that regard being that a conveyance of all of the property of the corporation might terminate the business of the company and thus defeat the objects of its incorporation; but not necessarily so, for, as said by the Supreme Court of Montana in *Forrester v. B. & M. Co.*, *supra*, (21 Montana, 544, 559) :

“A transfer or other disposition of all its property will not *ipso facto* dissolve a corporation, although the practical effect thereof may be to defeat the object of its organization. This is so because ownership or possession of property is not essential to corporate existence (citing cases). A flourishing mining corporation may desire to sell or otherwise dispose of its entire assets for the purpose of reinvesting the proceeds in a new enterprise within the corporate purposes, or of acquiring other mining property. Such sale or other disposition might be made at common law with the unanimous consent of the stockholders, without working a dissolution; nor would a dissolution be produced by the sale or assignment of the whole property of an insolvent corporation made by the directors—either with or without the consent thereto of all the stockholders therein.”

Salt Lake Auto Motor Co. v. Keith-O'Brien Co., *et al.*, 143 Pac. 1015.

We cannot accede to appellants' contention that the Garey case, if in point, forecloses the consideration of the question now presented by the courts of the United States. The question before the Supreme Court of Utah was whether the provision in the articles of incorporation, then being considered, constituted a contract between the stockholders of the company, and whether the statute

granting authority for the assessment of such stock impaired the obligations of such contract. The Court held that there was such contract as was subject to impairment; that the statute impaired the use, and therefore violated the provisions of the Constitution of the United States.

By the Act of December 23, 1914, Chapter 2, 38 Stat. L. 790, touching writs of error from judgments and decrees of state courts, it is provided thus :

"It shall be competent for the Supreme Court to require, by *certiorari* or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court, although the decision in such case * * * may have been against the validity of the state statute or authority claimed to be repugnant to the Constitution, treaties, or laws of the United States * * *."

If the contention of the appellants be correct, that the courts of the United States are bound by the decision of the state court upon such question, then the writ so granted is of no utility whatever, and the review an idle and useless procedure. It seems that under such circumstances it is the duty of the courts of the United States to use their independent judgment.

Vicksburg v. Water Works Co., 202 U. S. 453-467;

Detroit United Ry. v. Michigan, 242 U. S. 238-249.

In the former case, page 467, the Court said:

"But if the doctrine of Mississippi were to be applied, and with due respect to which the

decisions of its highest court are justly entitled, it has been frequently held, in passing upon a question of contract, in circumstances such as exist in this case, involving the constitutional protection afforded by the Constitution of the United States, this court determines the nature and character thereof for itself."

And in the latter case, page 249, the Court said:

"But, notwithstanding what was there said, it is too well settled to be open to further debate, that where this court is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it? and (3) Has that obligation been impaired by subsequent legislation."

If the legislature had power, under the repeal provision to terminate the existence of a corporation at any time, thereby compelling a sale of all its property and a distribution thereof, it must be granted that it had the power to authorize a majority or two-thirds of the stockholders to take steps which would accomplish the same purpose. That under the repeal statute, existing at the time of the organization of the Alice Company, and the subsequent provision of the Constitution of the state, the legislature of Utah had power at any time to repeal and set aside the charter of any corporation theretofore formed while the act was in force, is well settled by the authorities. See:

Thompson on Corporations, 2nd Ed., 411-414, and cases cited;

Cook on Corporations, 7th Ed., Vol. 2, Sec. 639, page 1972, and cases cited;

Greenwood v. Freight Co., 105 U. S. 13.

The legislature clearly having power to absolutely repeal and annul the charter of the Alice Company, and the legislature having, by its charter, granted the right to the Alice Company to hold, acquire and dispose of property, and this being the controlling purpose for which it was organized, may not the legislature, by subsequent legislation, regulate either the acquisition or transfer of the same? And how can it be said that this is a question in which the stockholders alone are concerned and in which the state has no interest?

Moreover, aside from the consideration of Section 322 of Compiled Statutes, in connection with the repealing act passed in 1874, we submit that Section 322 is clearly applicable to the Alice Company under the provisions of the following act of the Utah legislature. Section 353 of the Revised Statutes of Utah of 1898 is as follows:

"Rights and duties continued. Every corporation heretofore lawfully organized under any law of Utah, and existing at the time of the taking effect of this revision, shall continue in existence with all the rights, privileges, powers, duties and obligations conferred or imposed by the laws under which it has heretofore existed, as modified or controlled by the provisions of these statutes."

This section in exactly the same form is found as Section 353 of the Compiled Laws of Utah of 1907, in which compilation is also found Section 322 above discussed. Under this provision, any corporation organized before the adoption of Section 322 was made subject to the provisions of that section, if it elected to continue business. If it did not desire to be controlled by the provisions of Section 322 it, of course, had the option of sur-

rendering its charter and discontinuing business. Having elected to continue business, it must be held to have irrevocably consented to be bound by the provisions of Section 322, which were extended over all such corporations which should continue in existence by Section 353. As the legislature clearly had the power to repeal the charter of any corporation, it clearly had the right to compel the corporation to either surrender its charter or subject itself to the provisions of any particular statute, and certainly if the provisions of this Section 353 mean anything, they must mean that any corporation which continued its existence in Utah after 1898, or after 1907, became and thereafter was subject to the laws found in those revisions, and therefore, by continuing its corporate business after 1898 the Alice Company became irrevocably bound by Section 322 hereinbefore cited.

Louisville & Nashville Ry. Co. v. Garrett,
231 U. S. 298, 315.

The suggestion that Section 322, as amended by the laws of the State of Utah of 1905, is unconstitutional, because the amendatory act contains more than one subject, is without force. The Act relates in its entirety to the powers of corporations, and all its provisions are germane to the title. It is said that the title gives no intimation that mining corporations are to be invested, by the amendment, with any powers other or different from corporations generally. Mining corporations were not treated, in the laws of Utah, separately from other corporations, and were included within this general term. Due notice was given by the title of an amendment to the sections of the statute touching the powers of corporations, which authorized the

Legislature to amend the powers of a mining corporation as well as the powers of any other corporation. It is unnecessary to pursue this subject. The objection of appellants, and the basis thereof, is not made clear in their brief, and no authorities whatever are cited in support of their contention. Under such circumstances it is not thought that the question invites serious consideration.

III.

The general rule that corporations must have unanimous consent of all stockholders in order to dispose of their property has no application in Utah.

Again, we submit that the general rule invoked by appellants that a corporation must have the unanimous consent of all the stockholders in order to dispose of all its property, which rule is based upon the fact that such action would terminate the corporate existence and defeat its purposes prior to the time for which the corporation was organized, can have no recognition under statutory law, such as exists in Utah. Under the provisions of Chapter 72, Sections 3661, *et seq.*, two-thirds of the stockholders of a corporation may arbitrarily at any time cause the dissolution of a corporation which, of course, is followed by the distribution of its assets by sale, or otherwise, among its creditors and stockholders. This is exactly the same proceeding which has been taken, or was being taken, in the case of the Alice Company, with the exception of the order in which the proceedings were

taken. With such statutory provisions in force, can it be reasonably urged that the purposes for which a Utah corporation is formed cannot be defeated without the assent of all of the stockholders?

IV.

The findings of the District Court and Court of Appeals that the majority stockholders of the Alice Company had full power to dispose of all its property by reason of its financial condition, the state of its property and corporate business and its inability to further carry out the purposes for which it was created is fully supported by both the law and the evidence.

Before the majority of the stockholders of a corporation may sell all its property against the protest of the minority, it is not necessary that the corporation should be either insolvent or in imminent danger of insolvency, in the technical sense of that term. This power may be exercised either when the corporate business has become permanently unprofitable, or where it would be ruinous to the corporation or the stockholders, to continue the business, or where there are insufficient funds to carry the same on, and no money with which to pay existing indebtedness, or where the corporation is in failing circumstances, as well as when it is in fact insolvent, or in imminent danger of insolvency.

In subdivision Sixth of Section 2429, Thompson on Corporations, Second Edition, the author thus states the rule:

"SIXTH: The majority stockholders, even as against the protest of the minority, may dispose of all the property when the corporate business has become unprofitable and where it would be ruinous to the corporation and the stockholders to continue the business; *or*, when there are insufficient funds to continue the business and no money with which to pay existing indebtedness; *or*, when the corporation is in failing circumstances, or is in fact insolvent."

The Supreme Court of Montana, in the case of Forrester and MacGinnis against the Boston and Montana Consolidated Copper and Silver Mining Company, 21 Montana, page 544, early recognized this exception to the general rule; and in *Treadwell v. Salisburg Mfg. Co.*, 7 Gray, 393, one of the leading cases upon the subject, the rule is well stated as follows:

"By accepting a charter, they do not undertake to carry on the business for which they are incorporated indefinitely, and without any regard to the condition of their corporate property. Public policy does not require them to go on at a loss. On the contrary, it would seem very clearly for the public welfare, as well as for the interest of the stockholders, that they should cease to transact business as soon as, in the exercise of a sound judgment, it is found that it cannot be prudently continued. If this be not so, we do not see that any limit could be put to the business of a trading corporation, short of the entire loss or destruction of the corporate property. The stockholders could be compelled to carry it on

until it came to actual insolvency; such a doctrine is without any support in reason or authority."

See also

- Hayden v. Official Hotel Red Book & Directory Co., 42 Federal, 875;
- Savings Bank v. O'Reilly, 10 S. W. 865;
- Bowditch, *et al.*, v. Jackson, 82 Atlantic, 1014;
- Sewell v. East Cape May Beach Co., 25 Atlantic, 929;
- Traer v. Prospecting Co., 99 N. W. 290;
- Price v. Holcomb, 56 N. W. 407, 411;
- Thompson on Corporations, 2nd Ed., Secs. 2424 and 2429. Note.
- Cummings v. Parker, 157 S. W. 629;
- Miners Ditch Co. v. Zellerbach, 37 Cal., 543; 99 Am. Decs. 300;
- Peabody v. Westerly Waterworks, 37 Atlantic 807.

The condition of the Alice Company in the respects hereinbefore mentioned is clearly delineated in subdivision III and subdivision IV of our statement in this case, *supra*, and it would only tend to prolixity to now restate the same. The Court's attention is invited to this statement. It clearly demonstrates that the corporate business of the Alice Company had for many years been, and was then, permanently unprofitable; that it would have been ruinous to the corporation and the stockholders to have attempted to resume the business of mining operations upon the Alice property, and bear the enormous expenses thereof without assurances of success; that there were insufficient funds to resume and carry on such mining opera-

tions, and that there was no possible way by which such funds could be raised or even obtained by mortgages upon the property; that there was no money with which to even pay the existing indebtedness of the Company; that so far as its business was concerned, and so far as it was concerned, it was in failing circumstances, and utterly unable to further carry out the purposes for which it was organized.

Upon this point the District Court (Tr., Vol. I, p. 180), found as follows:

"At the time of sale Alice was dormant. Its long-time specific operations for silver had finally failed, and it was in debt; its plant destroyed; its mines closed and flooded; an expense and unprofitable for some 17 years next prior to the sale. Alice was ripe for dissolution and distribution of its assets to stockholders. Although it had large bodies of unworkable zinc-silver ores and much virgin ground, under such circumstances no rule of law obligates a corporation to borrow, if possible, necessarily large sums of money to pay debts and expenses or to enable it to rehabilitate its mines and experiment and explore, however desirous minority stockholders might be to assume the risk. For that is a matter of judgment in which the majority controls. By reason of the circumstances there was common-law power, co-extensive with any possibly given by statutes or articles without unanimous consent to sell all Alice property."

Likewise the Court of Appeals, among other things, said (Tr., Vol. II, p. 997):

"We are unable to agree to the contention on the part of the appellants that the properties of the Alice company in the condition they were at the time of the sale, and for years theretofore had been, could not be legally sold

and conveyed by the directors of the company without the consent of all of its stockholders. We quite agree that the company cannot be regarded as then insolvent, for it owed but \$34,101.56, payment of which, so far as appears, was not even being asked, much less urged (by the Butte Coalition Company, which it appears was the creditor), and owned properties for which the Anaconda Copper Mining Company was willing to pay the equivalent of over one and one-half millions of dollars. At the same time, all of the ores the properties were known to contain that could be worked at a profit had been extracted and disposed of many years before, and the development of other ore therein of commercial value, should such exist, necessarily involve the risking of a large amount of money. The Anaconda company, no doubt, could afford to take that risk—especially as the evidence shows that the exploration and development of the Alice properties could be made from the workings of some of its own properties—and it is reasonable to suppose that it had sufficient information to justify it in undertaking to do so. But the Alice company not only had no money with which to make such explorations and development, but was in debt, which indebtedness was necessarily gradually increasing. Its stock was non-assessable and therefore its stockholders could not be made to furnish the money essential to any further exploration of its properties. In the course of his testimony Ryan, the president of the company, said, among other things:

“There had been no operations on the Alice properties, excepting leases since 1893. After the Butte Coalition Company acquired control of the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct

company operation, except taking care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs we could not see where we were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations.'

"The fact that the Butte Coalition Company owned 234,000 of the 400,000 shares into which the capital stock of the Alice company was divided, which 234,000 shares were acquired by the former company from Ryan, and that he acquired them in large part from men also of large means, and that either or all of such owners might themselves have furnished or secured the money necessary for the further development of the properties, is, in our opinion, wholly unimportant. Conceding their ability to have done so, they were not obliged by any rule of law or equity to do it."

The contention of appellants that the substance of the circular sent out by the management to the stockholders of the Company affects in the least the right of the stockholders of the Alice Company to

dispose of its entire property, if they elected so to do, granted by the common-law, by reason of its having ceased to be a going concern, is clearly unfounded. What, if any, influence this circular had on the minds of the stockholders is not made to appear, and is, in our judgment, wholly immaterial. The right existing, the sale may not be avoided, even though the reason of the stockholders in voting the ratification might be otherwise, but there is no justification for the conclusion that the stockholders did not have in mind their rights, so reserved by the common law, as well as the statutory rights, undoubtedly given them by the laws of the State of Utah. If the contents of this circular were material upon this point, it is sufficient to say that the statements therein contained were abundantly sufficient to justify a sale of this property in pursuance of this power. Neither are the reasons given by Mr. Kelley and Mr. Ryan, referred to in appellants' brief, as to why the Anaconda Copper Mining Company desired to purchase the Alice properties, of any consequence whatever. They relate wholly to the purpose of the Anaconda Company in purchasing these properties, and not to the reasons why the Alice Company desired to sell the same to said Company.

V.

Both the District Court and the Court of Appeals erred in holding that by reason of unity of control of the Alice Company and Anaconda Company the burden of proof rested upon the Anaconda Company to show that the sale was fair and the consideration adequate, and that this burden was not discharged.

The Court below ruled in effect that on account of unity of control between Anaconda and Alice, the burden was cast upon defendant, Anaconda Copper Mining Company, to show a fair sale and adequate consideration, and that this burden had not been discharged. This ruling was in line with the contentions of Appellants in this case, and is unjustified by either the law or the testimony. In our statement, subdivision II, we treat of the relations between Anaconda and Alice. To this statement the attention of the Court is particularly invited, and the same is incorporated in this subdivision by reference. Therefrom it appears that Mr. Ryan was a director and president of the Alice Company, and also managing director of the Anaconda Company. There were no common directors of the two companies. Mr. Ryan and Mr. Thayer were also directors of the Butte Coalition Company, and likewise directors of the Anaconda Company. It also appears, among other things, that the Butte Coalition Company was incorporated for the purpose of acquiring, and shortly after did acquire, the capital stock of a corporation

known as the Red Metal Mining Company, and also purchased and acquired a controlling interest, 234,215 shares out of 400,000 shares, of the Alice Company. The funds with which Coalition purchased Red Metal and Alice stock were obtained by general subscription to the stock of the Coalition Company. At the time of its incorporation this Company had more than two thousand stockholders, and at the time of its dissolution over three thousand stockholders. Thomas F. Cole, disassociated in every way from Anaconda or Amalgamated, was President, and the Board of Directors was, in the main, disinterested persons. No director of Alice was ever connected with either Anaconda or Amalgamated, save John D. Ryan. In affairs of the Alice Company, Mr. Ryan testified that he was guided largely by the advice of Carson and Thornton, mining men of long experience and familiar with the Butte properties, and that this was particularly true in relation to a determination of the reasonable price of Alice properties. Beneficial ownership of stock held by the directors of the Alice Company rested in Butte Coalition, but that did not connect such directors with the Amalgamated or Anaconda Companies; and there is positively no basis upon the record for Appellants charging that Coalition or Alice were in any way creatures of, or controlled by, Amalgamated or Anaconda, or their officers. There are a large number of stockholders in Alice, not interested in Coalition, who have approved of the transaction with Anaconda. Butte Coalition and its stockholders were also interested in and approved the same; and to hold that the transaction can be voided and the interests of the approving Alice stockholders and Coalition Company and its stockholders injuriously

affected, would require most substantial proof of control of Alice by either Anaconda or Amalgamated. No such proof is found in the record. The rule announced by the learned Courts, and maintained by the Appellants, cannot be sustained. The authorities cited by Appellants upon this point apply in the main to cases where the director was dealing with the corporation in his personal capacity, and was making a personal profit out of the transaction, or where a majority of each board were common directors. We believe the general rule to be that a contract between a director and his corporation is not void, but is voidable at the option of the corporation if exercised within a reasonable time. Such is the rule laid down in *Stewart v. Lehigh Valley Ry. Co.*, 38 N. J. Law, page 505, but no such stringent rule applies to contracts made between corporations where the common directors are less than a majority, and where the contracts are approved by a sufficient number of directors not common to both boards.

This question was expressly passed on by the Supreme Court of California in the case of *San Diego v. Pacific Beach Co.*, 112 Cal. 53. In this case the respondent had five directors, and the appellant nine, and at the time the contract was made four of the directors of the appellant were also directors of the respondent. A majority of the directors were also stockholders of both. The contention of the appellant is that because of a common directorate the contract was void and incapable of ratification, etc. The Court says:

"Where two corporations, through their boards of directors, make a contract with each other, the directors who are common to both are not within the rigid rule of the cases which hold that one who acts in a fiduciary capacity

cannot deal with himself in his individual capacity, and that any contract thus made will be declared void without any examination into its fairness, or the benefits derived from it to the *cestui que trust*. Two corporations have the right, within the scope of their chartered powers, to deal with each other; and this right is certainly not destroyed or paralyzed by the fact that some, or a majority, of the directors are common to both. Of course, if such directors should wrongfully and wilfully use their powers to the prejudice of one of the corporations, their action, if not acquiesced in, and contested at the proper time, could be avoided, as in any other case of actual fraud. But such common directors owe the same fidelity to both corporations, and *there is no presumption that they will deal unfairly with either*; therefore, their acts as such common directors are not void. There are abundance of authorities to this proposition, but it is hardly necessary to refer to any other than that of *Pauly v. Pauly*, 107 Cal. 8; 48 Am. St. Rep. 98, and the cases there cited."

Again, in *Reclamation Dist. No. 70 v. Birks*, 113 Pac. 171, the same Court said:

"No presumption of illegality or unfairness attaches merely from the fact that Messrs. Tarke and Summy were trustees of both districts and that these districts had, or proposed to have, business dealings with each other through their boards of trustees. No such presumption arises merely because two corporations which have certain directors in common deal with each other."

In an extended note to the case first cited, L. R. A. book 33, page 788, the author says:

"The doctrine of the main case of *San Diego, Old Town & Pacific Beach R. Co. v. Pacific*

Beach Co., has not been uniformly adopted by the courts, but may be now said to be fully established in most jurisdictions."

And again, on page 796 of this note, we read as follows:

"But in the majority of cases holding that such contracts may be valid the presumption is one of fact, and favors the fairness of the transaction until there is a showing of circumstances that indicate the contrary. On this point also the main case of San Diego, Old Town & Pacific Beach Ry. Co. *v.* Pacific Beach Co. is in harmony with the majority of the decisions."

See also:

Union Pacific Ry. Co. *v.* Credit Mobilier,
135 Mass. 367, 377;

Flag *v.* Manhattan Ry. Co., 10 Fed. 413,
433;

Leathers *v.* Janney, 41 La. Ann. 1120;

Davis *v.* United States Elec. Power & L.
Co., 77 Md. 35;

Booth *v.* Robinson, 55 Md. 419;

Adams Mining Co. *v.* Senter, 26 Mich. 73.

Whatever contrariety may be found in the decisions in reference to where rests the burden of proof where there is a majority of common directors, we think no substantial conflict may be found where there is less than a majority of such common directors, or where the vote of the common directors is unnecessary to the execution of the contract.

There is a clear distinction between the two cases.
See:

U. S. Rolling Stock *v.* Atlantic R. Co., 34
Ohio St. 450;

Leavenworth Co. *v.* Chicago R. Co., 134
U. S. 688;

Evansville Public Hall Co. *v.* Bank, 42
N. E. 1097;

Hiles *v.* Hiles & Co., 120 Ill. App. 617;

Thompson on Corp., Sec. 1241.

Notwithstanding the findings of both the District Court and Court of Appeals, that the price paid for the Alice properties was inadequate, or rather that the defendant had failed to sustain the burden of showing that it was adequate, we feel justified, in view of the erroneous rule of law invoked by both courts upon this question, in directing the Court's attention to the proof upon this point and insisting that there is no substantial basis for a conclusion that the sale was not fair and the price adequate.

The consideration paid for Alice property is found by the Court to have been \$1,500,000, together with the assumption of certain liabilities of the Alice Company. This was a figure largely in excess of the then, or now, known value of the Alice property, and could only be justified on the basis of speculative value which the property might possess to the Anaconda Copper Mining Company, a value which could only be determined by a corporation strong enough to carry the burden of equipping, exploiting and developing the ground in the hope of encountering paying ore bodies, and strong enough to incur the speculative risk of the

investment, and so favorably situated that it could carry on explorations at the least possible expense.

Subdivisions 3 and 4 of statement, *supra*, contain a critical analysis of the testimony touching value of the Alice property and the condition of the Alice Company. The same is incorporated herein by reference and the attention of the Court invited thereto.

Therein it is clearly demonstrated that the Court gave undue prominence in its conclusions as to the adequacy of consideration to the estimates of value by Weed and Corry, and it is further demonstrated that these estimates were wholly incompetent and ought not to have been considered by the Court in any respect; and when these estimates are disregarded, as they should be, the undisputed testimony in the case leads the mind of a candid investigator irresistibly to the conclusion that the consideration paid for Alice was full, fair and adequate.

From this analysis, and from the record itself, it appears that under conditions existing in 1910, and for many years prior thereto, and at the time of the trial of this suit, the Alice properties contained no known ores of any value whatsoever; that for many years the property had been practically abandoned; that base ores remain in the workings of the mine, altogether refractory, carrying silver and zinc, which, notwithstanding the great progress made in the art of metallurgy, remain still unworkable. Although Alice was controlled by wealthy interests, which had kept continuous possession of the property, and had assiduously investigated the question of the reduction of these ores, no profitable method of their reduction had been discovered, and very recent and extensive investi-

gations had proven them wholly refractory to any known processes.

The most successful experimentations for the reduction of zinc ores in the Butte Camp had been carried on by Mr. Bruce, who, after five years and at great expense, adapted a process to the reduction of the zinc ores of the Butte & Superior and Elm Orlu, these ores being much less refractory than the Alice ores. The record shows that Bruce was unable to devise a method to successfully treat the Alice ores, and that even the high samples introduced into the record by Mr. Walker, the same being altogether hearsay, and the high values referred to in the Buzzo letters, also being hearsay, Mr. Bruce stated at the time of the transaction in question such ores could not be profitably handled, and even at the time of the trial such ores had only a slight value.

The analysis of the testimony, heretofore referred to and the record, shows that the Alice property could only be developed at an enormous expense, and that even a 500-ton stamp mill to treat Alice ores would cost more than \$500,000, and the expense for the development of these properties would be much greater to any other purchaser than to the Anaconda Company, its favorable situation in relation to the property being advantageous to it; that the value of the Alice ores was altogether speculative and depended upon future indeterminate progress in the metallurgical art; that the discovery of copper ores in the Alice properties was only a remote possibility, and that the amount of development work necessary to demonstrate the presence of such ores could not even be approximately estimated; that notwithstanding ten miles of underground workings and fifteen hundred feet

in depth, no copper of value had been discovered therein; that the Rainbow Lode is indistinctively silver-bearing district; that the only hope of finding any copper in the Alice would be in certain northwest and southeast veins which, under the testimony, may or may not penetrate Alice ground, and that as these veins have been developed and worked in the direction of the Alice property they have become absolutely barren of copper ores; that the estimates of Weed and Corry are based upon hearsay and incompetent testimony, and knowledge, and ought to have been discarded; that these estimates are altogether speculative and should not have been used as the basis for determining the question at issue, and that the Court should, from the details of the evidence, have decided as to the reasonableness of the consideration for the Alice property.

Said analysis and the record further show that during the entire period of the Company's operations after 1898 the stock of the Company had practically no value; that a few years prior to purchase by Anaconda the controlling interests of Alice property optioned a majority of the stock of that Company at the rate of One Dollar and Fifty Cents per share, or Six Hundred Thousand Dollars for the entire property, and that such stock was thereafter acquired by the Butte Coalition Company at that rate; that following that purchase, and during the period from 1906 to 1910, there had been no particular development adding to its value and no change in its condition; and yet it is now contended that in the year 1910 the value of the stock of the Alice Company had increased to such extent that Three Dollars and Seventy-five cents per share was wholly inadequate.

Strongly persuasive, if not conclusive, upon this question of value are the proceedings in reference to the Alice property in pursuance of the interlocutory decree. It is a matter of common knowledge of which notice will be taken that the mining situation in the United States was never better than at the time when the Alice property was offered for sale at public auction in the city of Butte in pursuance of the interlocutory decree of the court below. The price of copper had advanced far beyond what it was in 1910, and the products of zinc ores were commanding a price theretofore wholly unknown in the history of the mining industry. The utmost publicity in financial circles of the United States was given to the sale. Notwithstanding this, no purchaser could be found who would bid for the property a price in excess of that paid by the Anaconda Company in the year 1910.

The learned judge below, before entering final decree, should have considered this transaction as evidence touching the adequacy of the consideration paid for Alice, and this court not only may, but should, consider the same in determining whether or not the consideration for Alice was in all respects adequate.

Blythe v. Hinckley, 84 Fed. 234;

Celluloid Mfg. Co. v. Cellonite Mfg. Co.,
40 Fed 476;

*Northwest Trans. Co. v. Boston Marine
Ins. Co.*, 41 Fed. 796;

Street, Federal Equity Practice, Vol. 2,
Sec. 1918;

N. K. Fairbank Co. v. Windsor, 124 Fed.
202;

Roemer v. Neumann, 26 Fed. 333;

Deitch v. Staub, 115 Fed. 317.

VI.

The subsequent ratification of the contract of sale by the stockholders of the Alice Company renders the question of common directors immaterial.

The deed from the Alice Company to the Anaconda Company does not stand upon the act of the directors of either corporation. Of the seven directors of the Anaconda Company, one was a director of the Alice Company, and of the seven directors of the Coalition Company, two were directors of the Anaconda Company, but if any question existed as to the validity of this contract on account of the common directors of both companies, such a controversy is entirely disposed of by the proposition that the action of the respective boards of directors, and the contract which they entered into, was subsequently expressly ratified by the stockholders of both corporations. Even where a director deals personally with a corporation, and obtains an advantage, pecuniary or otherwise, in so doing, if the contract or action is subsequently ratified by the stockholders of the Company, it is a valid, binding obligation, and not even voidable.

Metropolitan Telephone Co., etc., v. The Domestic Telegraph etc., Co., 44 N. J. Equity, 568;

Cook on Corporations, 6th Ed., 658.

Even though both companies had had a common directorate instead of only a small minority of common directors, this question would remain unimportant, because the action of the directors of

the Alice Company was ratified and approved by, and made the act of, the stockholders. Under the law, if the directors were not disposed to act after the proceedings taken by the stockholders, their action could have been coerced.

VII.

The sale of the Alice property was wise and also advantageous to the Alice Company.

Appellants inquire why the Alice property should have been sold at the time it was sold. This question is answered by a moment's attention to the story of the Alice Company and the condition of its property and its financial situation. What reason was there that Alice should not sell? It obtained an opportunity to sell the Alice property for a fair price, something it had never had a chance to do during the entire history of its existence, during seventeen years of unprofitableness and idleness, and an opportunity which, if not accepted, would probably not occur again for another seventeen years or more. Measured by the selling price, more than a million and a half dollars belonging to the Alice Company had been, for over seventeen years, tied up in this unprofitable investment, yielding not a cent of revenue to its owners. It promised to remain so for an indefinite period. During that seventeen years no purchaser had been found for the property, and no syndicate or corporation who would take a lease and bond upon the same. Its ultimate value depended upon the intellectual processes of some metallurgist yet un-

known, and upon the remote probability that such metallurgist, some time in the indefinite future, might outstrip the present known knowledge of his art and develop a process making such ores valuable.

Development of the property would require, according to Weed and Corry, an expenditure of Two Million Dollars or better. Alice had no value upon which to base the borrowing of this money. The stock was not assessable, and the gentlemen who complain so bitterly now in reference to this trade with the Anaconda Company did not seem inclined to trust Alice for sufficient funds to carry out this development; and well they might be wary of such an adventure, for it might very reasonably be predicted that not only would the money be lost but Alice would also be stripped of all speculative value.

By the sale, Alice acquired property of the value of a million and a half dollars; property which, if converted into cash, which might readily have been done, and properly invested, would bring to Alice stockholders, either collectively or individually, a greater return each year than had ever been received, save and except during one year pending the existence of the Alice Company. Will Appellants please tell us why Alice should not have sold its property?

The wisdom of the sale is not only demonstrated by what is herein stated, and what has been disclosed in this brief and the record, in reference to the value and condition of the Alice property and of the Alice Company, but subsequent events after the year 1910 add confirmation to the wisdom of this transaction. Five years after this trade was accomplished, Alice still remains unproductive and

in the same condition as before, and five years thereafter, at public auction, duly and properly advertised, during a period of prosperity unexcelled so far as the mining industry is concerned, no bidder could be found who would offer in excess of a million and a half dollars for all the property of the Alice Company.

Appellants also inquire why the property was not leased and bonded. It does not appear that any opportunity was ever presented to lease and bond the property advantageously, or that any syndicate or association could be found willing to expend the necessary sums of money to develop the Alice property upon the chance of making it profitable; and it is certainly clear that it would have been inadvisable to take the gamble of a lease and bond upon the property when full, fair and adequate consideration was offered in property which was equivalent to cash. To this query we might reply—why did not the complainants in this case, during the seventeen years of idleness of the Alice property, lease and bond this property to some syndicate or association able and willing to undertake the enterprise?

The answer is evident in both instances. It simply could not be done upon a basis advantageous to the Alice Company.

Certainly the Alice Company and its stockholders were most fortunate in being able to dispose of such a property in 1910 for thirty thousand shares of the capital stock of the Anaconda Company, having a market value of one and one-half million dollars, paying regular dividends of Three dollars per share per year, and having property, in addition to that of the Alice, with a speculative value almost unmeasurable; and certainly the stockholders

of that Company displayed consummate wisdom in accepting the opportunity to convert a dead investment into a profitable and income-bearing one. If this sale had not been made the evidence shows the stockholders of the Alice Company would have, during a period of less than four years, the time between the date of the sale and the trial of this suit, been deprived of Three Hundred Thousand Dollars in dividends paid by the Anaconda Company.

But Appellants say that Weed and Corry have testified that it was not an opportune time to sell the Alice property, that the officers should have waited. Should have waited for how long? The stockholders had been waiting since the year 1898, anxiously expectant, hoping that something could be done with the property. Experiments upon the ores of other properties could not afford relief to the Alice, for the results of these experiments threw no light upon the problem of the Alice ores because of their difference in character. If the management of the Alice Company had not accepted the opportunity offered it by the proposition of the Anaconda Company in 1910, its officers and all others participating in such refusal would have been subject to most severe condemnation by the stockholders.

In determining the question of reasonable value of the Alice property, the question as to whether the transaction was an advantageous one to the Alice Company and its stockholders, and in determining the ultimate question as to whether the transaction ought to have been by the Court conditionally set aside, we submit that the Court should carefully consider the fact that the transaction is opposed by the holders of less than four

per cent. of the capital stock of the Alice Company, and that it has been approved and decided to be to their best interests by the recorded approval of the holders of more than seventy-two per cent. of the stock, and is presumably approved and desired by the holders of more than ninety-six per cent. of the stock, and in this connection, as laid down by the Court in the Bowditch case, 82 Atlantic 1014, *supra*, this Court should bear in mind that to set aside this transaction is to say that at the instance of the holders of less than one-twenty-fifth of the stock, the holders of the other twenty-four twenty-fifths shall not be permitted to exchange their Alice stock, of doubtful value and non-earning power, for their proportion of the Anaconda stock, having large present value, at least fair earning power, and speculative value difficult to estimate. But while this feature of the case may not be controlling, certainly in determining the question of reasonable consideration and of whether the transaction was an advantageous one to the Alice Company, the judgment of the men holding its stock must be of great assistance, and the judgment of Mr. Ryan, of whom the Court in its opinion said:

“* * * there is nothing to inspire belief that they aimed at aught but fair bargaining, or that they designed injury to Alice and consciously abused their trust,”

must be most persuasive.

At the stockholders' meeting, outside of the stock in which the Coalition Company was interested, the record shows that 122 individual holders directly approved of the transaction. Each of these stockholders presumably knew more or less of the Alice property and its condition, and had opinions

as to the value of their stock. Thus, we have the decisions upon this question of value and advantage of more than 122 individual stockholders who openly recorded their approval, in addition to the many holders of the remaining twenty-four per cent. of the stock who have indicated their approval by assenting to and not objecting to the transaction, and certainly the judgment of all of these individuals upon a matter in which they were directly interested must be of great effect upon any decision as to the questions before this Court. In addition, of course, we must presume from the record the approval of the transaction by the 3500 individual stockholders in the Coalition Company, who, in proportion to their stockholdings, were interested in the assets of the Alice Company.

VIII.

No officer of the Alice Company concealed any material facts from the Alice stockholders.

The question as to whether Mr. Ryan, or any other officers of the Alice Company, or even of the Anaconda Company (although certainly the Anaconda Company or any of its officers, as such, owed no duty of enlightening the Alice Company or its stockholders), did or did not lay before the Alice Company all of the facts within their knowledge as to the Alice or other ground in the Butte district, is clearly immaterial, as there is no stockholder before the court complaining that he gave his consent to the sale to the Anaconda Company because

of any misstatement concerning, or lack of knowledge of, any material fact. None of the complainants voted in favor of the transaction, and none of the other stockholders, who together owned more than 96 per cent. of the stock of the Company are complaining of the transaction. However this may be, there is positively no evidence in the record from which it may be found that Mr. Ryan or any of the directors of the Alice Company concealed any material fact from the stockholders of that Company. The condition of its properties and their development were matters of general public knowledge, and were shown by the records kept in the Company's office. Indeed, among the complainants in this case were stockholders of that Company, whose knowledge of its value, and opportunities for knowledge of its value, were far superior to any possible knowledge which Mr. Ryan could have had, since they were actively concerned with the operation of the property before and at the time it was closed down, and before it was filled with water to the 700-foot level.

Moreover, all the records of the Company showing previous operations and results were on file in the office of the Company. No development of any kind had been made since the operations ceased in the early 90's. The records of such sampling of the ore as had been done since the taking over of its stock interest by the Coalition Company, were matters of record in the office of the Company at Butte and open to any stockholder, but results of this sampling were so discouraging that they added nothing tending to increase the value of the property.

So far as developments made by the Anaconda Company in adjacent mines, the evidence clearly

shows that these developments, prior to 1910, the date of the sale, so far as they had any bearing whatever on the value of the Alice properties, were unfavorable, and the evidence of Corry and Weed shows that the facts of general and common knowledge in the Butte district concerning the operations of the Anaconda Company and other companies in the Northwestern part of the Butte camp would tend to give any Alice stockholder or other person a much more favorable opinion than the developments and conditions themselves would justify. There is no basis for the conclusion of the Court of Appeals, based upon the testimony of Mr. Ryan, that he concealed from Alice stockholders any material fact whatever, and there is no evidence in the record of any kind or character wherein any of the complainants assert or claim that any material fact touching the value of the Alice properties, known to Mr. Ryan, was unknown to them or either of them. Mr. Ryan testifies that in fixing the value of the Alice properties Mr. Carson and Mr. Thornton, directors of the Alice Company, altogether disinterested, had the controlling voice, and that they were mining engineers and familiar with the condition of the Alice. He also says that Professor Kemp, Mr. Keller and Mr. Klepetko, a committee of eminent engineers employed generally to appraise the properties in the Butte camp, which had theretofore been purchased by the Anaconda Company, did not make any report bearing particularly on the Alice property. Their duties related to operating mines, and it was impossible in the case of the Alice as there was no plant and the mine was inaccessible on account of being filled with water to the 700-foot level, and also says that so far as the Alice Company was concerned there was no

written report from any engineer on the property preparatory to the sale. Mr. Ryan declares in his testimony that the circulars to the stockholders issued by the directors was all the information the directors or anybody else had, and was sent to the stockholders previous to the meeting at which they were asked to vote on the acceptance or rejection of the offer of the Anaconda Company to buy the Alice property.

It does not appear in the evidence that the Jessie vein, mentioned by Mr. Ryan in his testimony, passed into or through the Alice ground. It does not appear that Professor Kemp, Keller or Klepetko communicated any material fact to Mr. Ryan that was theretofore unknown to the stockholders of the Alice Company. It does not appear that Mr. Buzzo, whose general talk with Mr. Ryan is referred to in Mr. Ryan's testimony, communicated to Mr. Ryan any material fact concerning these properties that was unknown to the complaining stockholders,—in fact, Mr. Buzzo had for many years prior to the acquisition of any of the stock of the Alice Company by Mr. Ryan, and thereafter, been in the employ of the Alice Company.

The District Court found that there had been no concealment upon the part of Mr. Ryan. In its opinion (Tr., Vol. 1, p. 185), it said:

"Ryan knew less of Alice than was known to its stockholders from inspection and reports. He had not seen its flooded depths, but to one of plaintiffs they were familiar."

The only concealment of facts shown by the record was on the part of Mr. J. R. Walker, one of the complainants, who testified to the apparently favorable gross value of ores which had been shipped by Mr. Buzzo and treated in Utah, and upon

which he based his idea of the value of the property, placing it in excess of ten million dollars. He stated that he had placed the returns and written data concerning these ores and their values in the pigeon holes in an office in Salt Lake, and had never communicated these facts to Mr. Ryan or any other officer of the Company.

All of the Alice stockholders had full knowledge, or full means of knowledge, of all the facts regarding the Alice Company and its property at the time of the transaction with the Anaconda Company. The condition of the property and its value was not unfairly pictured to them in the circular sent them by the officers of the Company, preliminary to the stockholders' meeting held in May, 1910.

IX.

Under the circumstances of this case the conveyance in question is not affected by the fact that the consideration paid therefor was capital stock of the Anaconda Company.

A great portion of Appellants' brief is devoted to a discussion of the question as to whether or not Alice had authority to accept stock of the Anaconda Company in payment for its physical properties, and in order to justify a discussion of this question it is assumed, contrary to the record and contrary to any evidence in this case, that Alice either accepted this stock with the intention of holding the same permanently as an investment, or

that it accepted the same with the intention subsequently, upon the dissolution of the Company, to compel each individual stockholder to exchange his Alice stock for stock of the Anaconda Company.

Neither of these assumptions finds any substantial basis in the record, but on the contrary it clearly appears that it was the intention of the officers of the Alice Company to accept this stock in payment for the Alice properties as a step in the liquidation of the affairs of the Alice Company; and it further appears that before the complainants brought this suit, proper and legal steps had been taken by the Alice Company, through its directors and stockholders, authorizing the dissolution of that Company and the distribution of its assets to the various stockholders.

There is nothing disclosed in any of these proceedings that tends to indicate that it was the purpose of the Alice Company to compel the stockholders of the Company to take Anaconda stock in kind, and the presumption undoubtedly is that the dissolution of the Company so authorized would be carried out according to the laws of the State of Utah; and if such laws required either the sale of the entire stock of the Anaconda Company, held by the Alice Company, or the distribution in kind to those stockholders, who were willing to accept the same, and the sale of the remaining stock and the distribution of the proceeds thereof to those stockholders preferring the proceeds of the sale of the stock to the stock itself, that necessary proceedings therefor would have been completed by the Alice Company had not the complainants in this cause interposed an objection and instituted legal proceedings to prevent the Alice Company from

doing the very thing which they now say the Alice Company should have done.

Complainants say that there is no express power delegated to a corporation by the laws of the State of Utah to own or possess the stock of any corporation; therefore this transaction is *ultra vires* and should be set aside as being against public policy.

It is true that there was no statute that authorized expressly a corporation to acquire the stock of another corporation. The public policy of any state need not be indicated by an express statute giving the right, but may be shown by implication from legislative acts. The Statute of Utah, Section 344, of the Compiled Laws of Utah of 1907, allowing the consolidation of corporations, is, however, strongly persuasive as indicating the public policy of Utah in that respect; and as was decided in the case of *MacGinniss v. Boston and Montana Company*, where, under a statute of the State of Montana similar corporations organized under the state laws are permitted to consolidate, it is indicative of the fact that there is no public policy contrary to permitting a foreign corporation to exercise this power.

In speaking of the persuasive effect of the statute in Montana, the Court says (29 Montana, 428, at p. 458) :

"It is therefore not against the public policy of the state for one corporation to hold and vote stock in another of like character. The provisions of the statutes *supra* are to be construed as amendments to the general laws authorizing the formation of corporations and defining their powers, within the purview of Section II of Article 15 of the Constitution, *supra*. The public policy of the state varies from time to time. It is not to be measured by

the private convictions or notions of the persons who happen to be exercising functions, but by reference to the enactments of the law-making power, and in the absence of them, to the decisions of the courts. When, however, the legislature has spoken upon a particular subject and within the limits of its constitutional powers, its utterance is the public policy of the state.

"The Constitution does not prohibit consolidation. Its prohibition extends only to any device by which an attempt is made to deprive the state courts of jurisdiction. Section 527 of the Civil Code expressly authorizes consolidations of domestic corporations. House Bill 132, *supra*, impliedly authorizes them between domestic and foreign corporations, or, at least, goes to the extent of empowering one domestic corporation to hold stock in another of a similar character."

The Court, therefore, upon that and other grounds, determined that it was not against the public policy of the state to permit the stock of one corporation to be owned by another of similar character.

So, too, it might be urged that the Constitution of the State of Utah does not prohibit the consolidation of corporations or the holding of stock by one corporation in another corporation. Its prohibitions in this respect are limited to prohibiting railroad corporations from consolidating the stock, property or franchises with any other corporation. See:

Section 13, Article 12, Constitution of the State of Utah.

It is not necessary in this case, however, to contend, neither is it necessary to sustain the position

of the defendants to contend, that authority exists in the Alice to acquire, own, possess and hold indefinitely, and as a permanent investment, the stock of any other corporation. One of the principles upon which this transaction is justified is that notwithstanding the most stringent limitations against a corporation exercising the power of holding stock in another corporation, still such a corporation is permitted by law to acquire and hold the stock of another corporation when such requirement and holding of stock is not intended to be of a permanent nature, but is temporary in character, and is done for the purpose of turning unprofitable assets of a corporation into liquid assets, and as a step leading towards the dissolution of the Company, and when it is the intention of the corporation either to distribute the stock or the cash obtained from a sale thereof upon dissolution proceedings regularly carried out, or where it is intended to sell or otherwise dispose of such stock.

Section 4064 of Thompson on Corporations, lays down the rule as follows:

"There are still other exceptions to the general rule prohibiting a corporation from taking stock in another corporation, it has long been recognized to be within the power of a corporation to sell its products to another corporation, and, under some circumstances, to sell all of its property to another corporation, and take the stock of the latter in payment or in part payment of the property so sold. This power has been recognized especially in cases where corporations were heavily indebted and such a transaction was the only apparent means of liquidating the indebtedness. Thus in a Rhode Island case, directors of a corporation were held to be justified in disposing of an unsalable factory on which existed a heavy indebtedness,

and taking in part payment therefor the stock of another corporation. These principles are supported by other decisions. The delivery of the certificates of stock under a contract of sale of property to be paid in stock, was held to operate as a discharge for the price".

See also:

Thompson on Corporations, Secs. 4063, 4065 and 4066.

The rule is thus stated in Clark & Marshall on corporations, page 531, as follows:

"There is no reason, however, why a corporation which has the power to dispose of property should not be allowed, in the absence of express prohibition, to sell it for stock in another corporation, provided the transaction is for the *bona fide* purpose of advantageously disposing of the property, and the stock is taken with a view of selling it and converting it into money."

In *Hodges v. New England Screw Co.*, 53 American Decisions, page 624, a case was presented somewhat similar to the present one, where a corporation in failing circumstances undertook to convey all of its property, and receive in payment the stock of another corporation. The Court says:

"There are large classes of corporations in Rhode island and the other states, which may and do rightfully invest their capital in the stock of other corporations; such, for instance, as religious and charitable corporations; and corporations for literary and scientific purposes. So insurance companies may rightfully invest their capital in the stock of other corporations, such as banks and railroads, and the like. Nor have we any doubt that the screw company might have rightfully taken this stock in the iron company, in payment for

their rolling-mill, if it had been taken with a view to sell again and not permanently to hold it."

This principle was expressly recognized in the case of *McCutcheon v. Merz Capsule Co.*, as decided by the Circuit Court of Appeals in the Sixth Circuit, Justices Taft and Hammond concurring with Justice Lurton, 71 Federal Rep., 787, although the Court held that the facts did not, in the particular case, bring the corporation within the exception to the general rule. Said the Court:

"The general rule is that, without express authority, a corporation cannot invest its funds in the stock of another corporation (citing authorities). To this rule there are certain exceptions, due in part to strong implication from the powers expressly granted, or to the objects and purposes for which stock has been acquired. Thus under the rule that the implied powers of a corporation are only such as are necessary to the exercise of its corporate franchises, it has been held that where a debt was collected in the stock of another company, it was a valid transaction, under the implied authority to collect its debts in the most efficient way (citing cases). So, in *Treadwell v. Manufacturing Co.*, 7 Gray, 393, 405, it was held that, for the purpose of retiring from business, it was competent for a manufacturing corporation to sell the whole property of the corporation, taking payment in the shares of a new corporation, to be distributed among the stockholders of the old company. * * * That the facts of this case do not bring it within any well-recognized exception to the general rule inhibiting such investments is to us a most obvious proposition."

In *Byrne v. Schuyler Electric Mfg. Co.*, 65 Conn., page 348, the doctrine is also recognized, where the Court says:

"Nor do the cases cited deny that a corporation, under some circumstances, might expend its whole capital in the purchase of the stock of another corporation; as if such purchase was made for the purpose of selling the stock, and not permanently to hold it. That is what was said to be lawful in *Hodges v. New England Screw Co.*, 1 R. L., 347. So, too, if such a purchase was made by a corporation in embarrassed circumstances, as the most advantageous way of closing its affairs, paying its debts and settling with its stockholders, it would be legitimate. This was what was done, and decided to be proper, in the *Treadwell* case."

In conclusion, after a review of the authorities, the Court says:

"It may be stated as a general rule we think, subject possibly to some exceptions, that a corporation may not become a stockholder in another corporation for the purpose of holding the stock permanently, unless expressly authorized to do so. A solvent corporation may buy and sell the stock of another corporation, if done in the usual course of business, and may become the owner of such stock if taken in payment for debts; but an insolvent corporation may take the stock of another corporation only for the purpose of closing up its business, to be divided in kind, or to be converted into money and divided among its creditors and shareholders."

See also:

- Holmes & Gregg Mfg. Co. v. Holmes & Co.*,
127 N. Y. 252;
- Metcalf v. American School, etc., Co.*, 122
Fed. 115;
- Treadwell v. Salisbury Mfg. Co.*, 7 Gray,
393.

That a national bank may take the stock of any corporation not for the purpose of dealing in stocks, but when it is necessary to hold the same temporarily, as for the satisfaction of a debt, see 92 U. S., page 122.

In this case, as shown by the evidence, not only was it the intention of the directors of the Alice Company, if authorized by the stockholders, to bring about the dissolution of the company and the distribution of its assets, but there has been introduced by the complainants a copy of the minutes of a meeting held by the stockholders at which proceedings were regularly taken for the submission of the proposition to the stockholders to dissolve the company, and such proposition was carried by a vote of practically three-fourths of the stockholders of the corporation. Under the laws of Utah such dissolution may be authorized by a vote of two-thirds of the stockholders. It is alleged in the bill and disclosed by the evidence, that thereafter, in accordance with the Utah statutes, such proceedings were instituted in the District Court of Salt Lake County, Utah, as would have resulted in a decree of dissolution having been entered had it not been for the litigation instituted by the complainants in this action. These facts demonstrate the intention of the officers of the Alice Company to dissolve it and not to convert it, as suggested by complainants' counsel, into a mere stockholding corporation. Moreover, they cure any vice which might have existed in its original acquisition, and remove any cause for complaint which dissenting stockholders might otherwise have.

Mr. Kelley testified that before the institution of the corporate proceedings which resulted in the transfer to the Anaconda Company, it was determined by the directors of the Company, if the

transaction with the Anaconda Company should be authorized by the stockholders, to thereafter proceed to dissolve the corporation and to liquidate its assets and divide them among the stockholders. It is expressly shown by Mr. Kelley's testimony that it was not the intention to force any of the Anaconda stock upon any stockholder who did not desire to take the same, but in such case the stock would be sold and the proceeds turned over to such objecting stockholder. The strongest corroborating evidence that could be offered as showing that Mr. Kelley truly stated the purpose of the officers of the company is shown by the fact that long before the commencement of this action, and after the property had been conveyed to the Anaconda Company, so that the Alice Company was in a condition to be dissolved and its assets distributed, the necessary stockholders meeting was held and statutory proceedings instituted to accomplish such dissolution in compliance with the laws of Utah.

But counsel argue that because of the fact that the circular letter to the stockholders accompanying the notice of the stockholders' meeting of May 27, 1910, at which the sale was authorized, did not also lay before the stockholders for consideration at that meeting the question of dissolution and did not state the plan of the directors as to the dissolution of the company, that such failure is strongly persuasive of their contention that no dissolution was intended. Until the stockholders at their meeting should consider and ratify the transaction with the Anaconda Company, and until the property had been conveyed, and the assets of the Alice Company were in condition to be distributed or liquidated, the meeting authorizing the dissolution could not properly be called or held, and until the sale of the property had been consum-

mated and the Alice put in a condition for dissolution, such meeting would have been premature.

Counsel further argue that because this circular spoke in encouraging terms of the value of the Anaconda stock, which would be received in exchange, is an indication that it was the intention to have the stock held by the Alice Company as a permanent investment.

Whether an Alice stockholder upon subsequent dissolution should elect to take his proportion of the Anaconda stock, or should insist upon having it sold upon the market so that he might receive the proceeds, it certainly was of interest to him that the stock was of large value. Nothing in this language justifies the inference that it indicated an intention to permanently keep this stock in the Alice treasury. What purpose could there have been in the minds of the Alice directors in planning to subject the Alice stockholders to the expense and trouble of keeping such corporation alive merely to hold the Anaconda stock, when each stockholder could as well control his proportion or receive the proceeds thereof. Again, as shown by Mr. Kelley's testimony, the keeping alive of the Alice Company would have also prevented the dissolution of the Butte Coalition Company. The Court certainly cannot believe that the Alice directors had decided to keep the Anaconda stock in the Alice treasury, and thus entail the expense and trouble of keeping in existence these two large corporations.

Counsel further criticise the evidence of Mr. Kelley regarding the intention of the Alice officers by stating that his conferences were merely with the directors as individuals, and that no official action was shown to have been taken towards declaring the intention of the directors to dissolve the Alice Company prior to the stockholders' meet-

ing authorizing the same. As shown above, the matter was not in condition for action by the Alice board of directors until after the Anaconda transaction had been ratified by the stockholders, and when it came time to act, the board met and caused the proper proceedings to be instituted for the dissolution of the company.

Under the facts in this case, it is immaterial whether any technical corporate action was taken by the directors of the Alice Company declaring intention to dissolve the Alice Company. Such intention is clearly disclosed, and before the suit of the complainants, proper corporate action upon the part of the stockholders and directors had been taken to effectuate this purpose. This purpose would have been effectuated, the corporation legally dissolved and its assets legally distributed to its stockholders were it not that these complainants instituted legal proceedings preventing the Alice Company from carrying out and accomplishing the very things which they now assert should have been carried out and accomplished by it in order to render the acquisition of the stock of the Anaconda Company by it a legal transaction.

Certainly this sale may not be rescinded upon the ground that Alice had no power to acquire Anaconda stock as a permanent investment, when it is manifest that its corporate officers had no such intention, and when, prior to the institution of this suit, legal steps had and were being taken to dissolve the Company and dispose of such stock, which would have been fully accomplished but for the intervention of the complainants. They may not claim a rescission on the ground that the Alice has not done the things which it ought to have done, when in fact the accomplishment of the same was alone prevented by their own conduct.

X.

The contract of sale having been fully executed, the contention that Alice Company had no power to transfer for capital stock cannot now be urged by a stockholder of Alice in behalf of that corporation.

If it be conceded, as it must be, that the Alice Company had power to sell its property to the Anaconda Company, and that under certain conditions it had a right to accept the capital stock of the Anaconda Company in payment therefor, the contract, after the same has been fully executed, the consideration paid and the property transferred, cannot be rescinded upon the suggestion of a dissenting stockholder of the Alice Company. If it was the purpose at the time of the making of the contract of sale to dissolve the Alice Company, upon the transaction being completed, to liquidate its assets and divide them amongst the stockholders, the Alice Company had a right to transfer for the capital stock of another corporation; and the subsequent conduct of the Alice Company cannot deprive the Anaconda Company of the benefit of the transaction. This being true, it is equally plain that the Anaconda Company, as purchaser, after the completion of the transaction, had no power to control the Alice Company in its disposition of the proceeds of the sale, and was not concerned with the disposition to be made of the stock by that Company. It is very true that the Anaconda Company was bound to take notice of the charter and statutory powers of the Alice Company; it is equally true that it was not bound to inquire further. Un-

der the statute and the charter, and under the financial condition of the Alice Company, it having power to transfer its property, and under the law having power, under certain circumstances, to transfer it for stock the Anaconda Company was not bound to inquire what were the plans of the Alice Company or its officers with reference to the disposition of that stock, and is not to be held culpable because the Alice Company might fail to dispose of said stock in a proper and legal manner. On the contrary, there being a legal method by which the Alice Company could acquire and dispose of the stock,—that is, by dissolution and liquidation, the presumption was that it would follow that lawful path. It certainly was not *ultra vires* for the Alice Company, under certain conditions, to sell its property for stock. There being a plain legal course which the Alice Company could have followed by selling its property and taking in exchange for the same the capital stock of the Anaconda Company, the transaction thus far was clearly *intra vires*, and certainly because the Alice Company did not follow, or did not intend to follow the law in its subsequent conduct, the sale cannot, for that reason, be now rescinded. Much less can it be rescinded upon the suit of dissenting stockholders of the Alice Company who, by their conduct, have prevented the Alice Company from making legal and proper disposition of the stock received by it and of its assets. It certainly would be a very strange rule of law, and one unrecognized by the authorities, to permit a dissenting stockholder of the Alice to prevent, by legal proceedings, the constituted authorities and stockholders of that Company from converting the Anaconda stock into cash dissolving the Company and distributing the proceeds thereof to the stockholders, and then, after having so prevented the Alice Company from tak-

ing legal corporate action in this regard, impute the wrong of the Alice Company to the Anaconda Company and rescind an executed contract and a sale of property on that account. The contract having been fully executed, the stock transferred to and received by the Alice Company, neither party, nor anyone on behalf of either, can disturb the *statu quo*.

The rule even upon strictly *ultra vires* contracts, where the contract has been fully performed, by payment and a conveyance and transfer, prevents a rescission at the suit of either party, and the corporation would be estopped from questioning it in any manner whatever. In this case, the suit, while brought by minority stockholders, is brought in behalf of, and for the benefit of, the Alice Company, and if the Alice Company could not raise the question as to the transaction being *ultra vires*, because of the consideration being capital stock, the same restriction applies to the action although brought in the name of minority stockholders.

Clark & Marshall on Private Corporations, pages 551, 553, 554;

Metcalf v. American Furniture Co., 122 Fed. 166, 123-124;

Miners Ditch Co. v. Zellerbach, 37 Cal. 543;

Holmes & Griggs Co. v. Metal Co., 24 Am. St. Rep. 452;

Miller v. Fleming & Fox Co., 59 S. W. 512; Santa Cruz v. Wykes, 202 Fed. 372;

R. R. Co. v. Johnson, 58 Kansas, 175; 48 Pac. 847;

Bowman v. Foster & Logan Hdw. Co., 94 Fed. 592;

Fleitmann v. Welsbach Co., 240 U. S. 27, 29.

THE SHERMAN ANTI-TRUST LAW.

I.

The Sherman Anti-Trust Law cannot be invoked by stockholders of a selling corporation to rescind an executed sale upon the ground that the buying corporation exists in contravention of the Sherman Anti-Trust Law.

The District Court impliedly, and the Court of Appeals directly, held that the complainants could not invoke a violation of the Sherman Anti-Trust Law in their behalf. This ruling is undoubtedly correct.

The Sherman Anti-Trust Law provides its own penalties in Sections 4, 5 and 6 as follows:

- (a) A criminal prosecution;
- (b) A suit by the United States, conducted by the District Attorneys and Attorney General to restrain violations of the same;
- (c) The forfeiture of property in transportation;
- (d) A suit at law for treble damages by an individual injured.

The only remedy that may be invoked by an individual injured, whether such individual be a stockholder in a corporation and bring the suit in behalf of such corporation, or is acting upon his own account, is that provided for in Section 7,—a suit for treble damages. Injunctive or equitable relief of any character, for conduct contravening

the Act, must be sought by the United States through its proper officers.

It is clear upon the authorities that such a suit may not be even brought under the circumstances of this case to prevent threatened action, and if such be not so, much less may such a suit be brought to set aside and rescind a completed sale, as is the subject of the present bill of complaint. We believe the multitude of authorities, including the Supreme Court of the United States, sets this matter at rest.

- Wilder Mfg. Co. v. Corn Products Refining Co., 236 U. S. 165; 59 Law Ed. 521;
- Paine Lumber Co. v. Neal, 244 U. S. 459, 471;
- Fleitmann v. Welsbach Co., 240 U. S. 27, 28;
- Corey, *et al.*, v. Independent Ice Co., 207 Fed. 459;
- Metcalf v. American Furniture Co., 122 Fed. 116;
- Gulf C. & S. Ry. Co. v. Miami Co., 86 Fed. 207;
- Pidcock v. Harrington, *et al.*, 64 Fed. 821;
- Ames v. Am. Tel. & Telegraph Co., 166 Fed. 820;
- Greer Mills & Co. v. Stroller, 77 Fed. 2;
- Blindell, *et al.*, v. Hagan, 54 Fed. 41;
- Sou. Ind. Express Co. v. U. S. Express Co., 88 Fed. 660;
- Block v. Standard Distilling & Distributing Co., 95 Fed. 979.

The Metcalf case, *supra*, may be quoted from as illustrative of the rulings made by the other Fed-

eral Courts upon the various circuits. It is directly in point. The case was first considered by the District Court and reported in 108 Fed. 909. Upon demurrer, the demurrer was sustained for multifariousness. Upon amendment of the bill, the case was reconsidered. In the first decision, by implication, it was held that such a suit could be maintained by dissenting stockholders under the Sherman Act, but in this case, that conclusion is expressly overruled and denied.

This was a suit brought by a dissenting stockholder in behalf of his corporation against the grantor and grantee *to compel a reconveyance of property which it was charged had been conveyed by the grantor through the wrongful act of its officers and stockholders to the grantee, for the purpose of monopoly, and in violation of the Sherman Anti-Trust Act.* It is therefore on all fours with the case at bar. On page 126 the Court said:

"I do not understand that it is claimed by complainant that this court has the power to take cognizance of the alleged illegal combination because of the provisions of the Anti-trust act of 1890. It has been many times decided, and no longer admits of any question or doubt, that the only party entitled to maintain a bill in equity for injunctive relief for violating the provisions of the anti-trust act is the United States Attorney, at the instance of the Attorney-General."

If any doubt existed upon these questions, we think the same was removed entirely by the decision of the Supreme Court of the United States in the Wilder Manufacturing Company case, *supra*, decided February 23, 1915, where the subject is very thoroughly discussed by Mr. Chief Justice White, and his conclusions concurred in by the

entire court. Among other things, the Court said (236 U. S. pp. 173-176) :

“* * * In the second place, the proposition is repugnant to the anti-trust act. Beyond question, re-expressing what was ancient or existing, and embodying that which it was deemed wise to newly enact, the anti-trust act was intended in the most comprehensive way to provide against combinations or conspiracies in restraint of trade or commerce, the monopolization of trade or commerce, or attempts to monopolize the same. *Standard Oil Co. v. United States*, 221 U. S. 1; 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, 31 Sup. Ct. Rep. 502, Ann. Cas. 1912 D, 734; *United States v. American Tobacco Co.*, 221 U. S. 106, 55 L. Ed. 663, 31 Sup. Ct. Rep. 632. In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute, but the remedies which it provided, were co-extensive with such conceptions. Thus the statute expressly cast upon the Attorney-General of the United States the responsibility of enforcing its provisions, making it the duty of the district attorneys of the United States in their respective districts, under his authority and direction, to act concerning any violations of the law. And in addition, evidently contemplating that the official unity of initiative which was thus created to give effect to the statute required a like unity of judicial authority, the statute in express terms vested the circuit court of the United States with ‘jurisdiction to prevent and restrain violations of this Act,’ and besides expressly conferred the amplest discretion in such courts to join

such parties as might be deemed necessary, and to exert such remedies as would fully accomplish the purposes intended. Act of July 2, 1890, Chap. 647, 26 Stat. at L. 209, Comp. Stat. 1913, Sec. 8820.

"It is true that there are no words of express exclusion of the right of individuals to act in the enforcement of the statute, or of courts generally to entertain complaints on that subject. But it is evident that such exclusion must be implied for a two-fold reason: First, because of the familiar doctrine that 'where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes'. *Farmers' & M. Nat. Bank v. Dearing*, 91 U. S. 29, 35; 23 L. Ed. 196, 199; *Barnet v. Muncie Nat. Bank*, 98 U. S. 555; 25 L. Ed. 212; *Oates v. First Nat. Bank*, 100 U. S. 239; 25 L. Ed. 580; *Stephens v. Monongahela Nat. Bank*, 111 U. S. 197; 28 L. Ed. 399, 4 Sup. Ct. Rep. 336; *Tennessee Coal, I. & R. Co. v. George*, 233 U. S. 354, 359; 58 L. Ed. 997, 999, L. R. A. 1915; 34 Sup. Ct. Rep. 587; Second, because of the destruction of the powers conferred by the statute, and the frustration of the remedies which it creates, which would obviously result from admitting the right of an individual, as a means of defense to a suit brought against him on his individual and otherwise inherently legal contract, to assert that the corporation or combination suing had no legal existence in contemplation of the anti-trust act. This is apparent since the power given by the statute to the Attorney-General is inconsistent with the existence of the right of an individual to independently act, since the purpose of the statute was where a combination or organization was found to be illegally existing to put an end to such illegal existence for all purposes, and thus protect the whole public,—an object incompatible with the thought that such

a corporation should be treated as legally existing for the purpose of parting with its property by means of a contract of sale, and yet be held to be civilly dead for the purpose of recovering the price of such sale, and then, by a failure to provide against its future exertion of power, be recognized as virtually resurrected and in possession of authority to violate the law. And in a twofold sense these considerations so clearly demonstrate the conflict between the statute and the right now asserted under it as to render it unnecessary to pursue that subject further. In the first place, because they show in addition how completely the right claimed would defeat the jurisdiction conferred by the statute on the courts of the United States,—a jurisdiction evidently given, as we have seen, for the purpose of making the relief to be afforded by a finding of illegal existence as broad as would be the necessities resulting from such finding. In the second place, because the possibility of the wrong to be brought about by allowing the property to be obtained under a contract of sale without enforcing the duty to pay for it, not upon the ground of the illegality of the contract of sale, but of the illegal organization of the seller, additionally points to the causes which may have operated to confine the right to question the legal existence of a corporation or combination to public authority sanctioned by the sense of public responsibility, and not to leave it to individual action, prompted, it may be, by purely selfish motives.

“As, from these considerations, it results not only that there is no support afforded to the proposition that the anti-trust act authorizes the direct or indirect suggestion of the illegal existence of a corporation as a means of defense to a suit brought by such corporation on an otherwise inherently legal and enforceable contract, but, on the contrary, that the provisions of the act add cogency to the principles

of general law on the subject, and therefore make more imperative the duty not directly or indirectly to permit such a defense to a suit to enforce such a contract, we put that subject out of view and come to the only remaining inquiry, the alleged effect of the previous ruling in the Continental Wall Paper case, *supra*."

In discussing this question in this case the Court of Appeals said:

"While the last point mentioned (violation of Federal anti-trust act) has been very ably and elaborately argued by counsel on both sides, we find it unnecessary to consider it for the reason that as we understand the recent decision of the Supreme Court in the case of *Wilder Manufacturing Company vs. Corn Products Refining Company*, 236 U. S. 165, it is not available to the appellants.

"That case involved the construction of the Anti-Trust Act and the effect of a profit-sharing contract of the Refining Company and those dealing with it exclusively, and the right of that corporation to recover for goods sold by it to the Manufacturing Company. The court, in denying the defense interposed by the purchaser based upon the claim that the Refining Company had no legal existence as it was a combination composed of all the manufacturers of glucose or corn syrup in the United States, illegally organized with the object of monopolizing all dealings in such products, in violation of the Anti-Trust Act of Congress, and had further sought to perpetuate its monopoly by devising a certain profit-sharing scheme, based its ruling upon two grounds, the second of which is as follows."

Thereupon, after quoting extensively from the opinion, the Court said:

"So far as the point above alluded to is concerned, the only difference between the case

cited and this is that in that case a private corporation undertook to avoid the payment of money due from it under a contract with another private corporation on the ground that the latter was an illegal monopoly and therefore had not the power to make the contract because of the Anti-Trust Act, while here the contention is that the Copper Company was without power to make a certain purchase from another private corporation because of the same act—which is, in principle, as we conceive, no difference at all” (Tr., Vol. II, pp. 991, 994).

In *Paine Lumber Co. v. Neal*, *supra*, on page 471 of the majority opinion we read as follows:

“In the opinion of a majority of the court if the facts show any violation of the Act of July 2, 1890, c. 647, 26 Stat. 209, a private person cannot maintain a suit for injunction under Sec. 4 of the same (*Minnesota v. Northern Securities Co.*, 194 U. S. 48; 7L, 71), and especially such an injunction as is sought; even if we should go behind what seems to have been the view of both courts below, that no special damage was shown, and reverse their conclusion of fact.”

Even the Clayton Act, passed October 15, 1914, Chapter 223, Section 16, 38 Stat. 730, 737, would not justify the maintenance of a suit for rescission even though applicable, which is not the case. It reaches only to injunctive relief by one threatened with special injury.

In *Fleitmann v. Welsbach Co.*, *supra*, on page 29, this Court said:

“Even the Act of October 15, 1914, c. 323, Sec. 16, 38 Stat. 730, 737, passed since this suit was begun, does not go farther in terms than to give an injunction to private persons against threatened loss.”

Against this array of authorities, there is only the case of *Bigelow v. Calumet, etc., Co.*, which indulges in a serious discussion of the question to the contrary. The decision was principally based upon the case of *Metcalf v. American Furniture Co.*, 108 Federal, 909, which was reconsidered in 122 Federal, 116, and the rule announced to be as we contend, as is shown by the excerpts from said case hereinbefore set out.

If the stockholder or individual may not, when thus injured, maintain a suit for *injunctive* relief, much less may he maintain a suit for other equitable relief, such as that sought in this action.

The gist of this action is the rescission of the sale of the Alice properties to the Anaconda Copper Mining Company, the cancellation of the deeds of conveyance, and reconveyance of the stock and property from one to the other, all of which is equitable in its nature, and comprehends a redress for the violation of the anti-trust law, which does not fall within any of the terms of the remedies provided for therein. The relief here sought is grounded squarely upon the Sherman Anti-Trust Act, and the remedies therein provided, and if it cannot be obtained upon the ground upon which it is sought, it may not be obtained at all.

Thus far we have discussed the question of the right of an individual or stockholder to equitable relief under the Sherman Anti-Trust Law, either before or after the consummation of the act complained of, and the authorities which we have cited necessarily support the proposition which we are now to discuss more fully, that after the consummation of the transaction, and the execution of the contract, dissenting stockholders of the Alice Company cannot maintain a suit to compel reconveyances, and rescind and cancel title deeds,

for the reason that the purchase of the property of the Alice Company by the Anaconda Company was for the purpose, entertained by the buyer, of restraining trade or monopolizing the copper industry.

Whatever may be said of the right of a stockholder of the buying company to prevent, by injunction, a purchase by his own Company, violative of the Sherman law and with the intent to monopolize interstate trade and commerce, we hold it to be beyond any known principle to permit either the selling corporation or a stockholder thereof to undo a completed transaction upon the ground that it had its inception in a purpose entertained by the buyer, which contravened public policy.

The present suit is a suit by stockholders on behalf of the Alice Company. If it might not be maintained by the Alice Company, upon the ground stated, it may not be maintained by stockholders thereof.

Fleitman v. Welsbach Co., 240 U. S. 27, 28.

This is clearly demonstrated by the equity rules of this court, which expressly provide that before a stockholder may maintain a suit in behalf of the corporation, he must make every reasonable effort to secure the suit to be brought by the corporation. If a stockholder might, on behalf of the corporation, maintain a suit which the corporation itself could not maintain, then a demand upon the corporation to bring a suit which it cannot maintain would simply be an idle performance, not required by any rule of equity.

The sale of this property by the Alice Company

to even a known trust was not *ultra vires*, for the Alice Company had a right to sell its property. It was not immoral, neither was it illegal, because there is no law prohibiting the sale of property to a corporation or an individual whose business may be conducted in restraint of interstate commerce.

Such sale upon the part of the Alice Company was void on account of the alleged trust character of the purchaser, neither was the title vested in the purchaser void on account of its alleged trust character; neither was it voidable at the suit of any one whomsoever, except the Government of the United States.

Indeed, the policy of disturbing as little as possible the property and property rights of unlawful combinations, has numerous times been approved by the Supreme Court of the United States. In *American Tobacco Company*, 221 U. S., page 185, in speaking of the principles which should be kept in view in rectifying the unlawful conditions which existed, the Court stated one of those to be a "proper regard of the vast interests of private property which may have become vested in many persons as a result of the acquisition either by way of stock ownership or otherwise of interests in the stock or securities of the combination without any guilty knowledge or intent in any way to become actors or participants in the wrongs which we find to have inspired and dominated the combination from the beginning."

Assuming the sale to have been for a fair price, and that must be assumed, when considering complainants' cause of action upon the sole ground of a violation of the anti-trust act, neither the Alice Company nor any stockholder was injured in the least by the sale of the property to the Anaconda

Company, though a trust, neither was it or they subjected to any penalties whatsoever.

If indeed, the case has shown that there was such a unity of interest between the Anaconda Copper Mining Company and the Alice Company, or such a common directorate, as to avoid the sale unless it was for full value and absolutely fair, this question must be dealt with independently of the allegations in reference to the Sherman Anti-Trust Act and under the proper subdivisions of complainants' Bill.

The authorities abundantly affirm the doctrine, that after a transaction contrary to public policy, is consummated, it may not upon that ground be rescinded, but the law will leave the parties in exactly the position in which they had placed themselves, *and the law implies a contract between the parties which is enforceable, that neither will attempt to undo that which has already been done.*

Boyd v. New York & H. R. Co., 220 Fed. 179;

Wilder, etc., v. Corn Products, etc., 236 U. S. 165;

Metcalf v. Am. Furn. Co., 122 Fed. 116;

Camors-McConnell Co. v. McConnell, 140 Fed. 415;

Connolly v. Union Sewer Pipe Co., 184 U. S. 547;

Santa Cruz v. Wykes, 202 Fed. 372;

Houston, etc., v. Texas, 44 U. S. Law Ed. 688.

The *Boyd* case, *supra*, was a suit brought for the purpose of undoing certain contracts and avoiding certain executed conveyances claimed to be in contravention of the Sherman Anti-Trust Law, as

well as for preventive relief against future wrongs. The Court said:

"If the lease of 1873 created a control or unity of competing interests forbidden by the Sherman Act, the fact that such obnoxious arrangements long antedate that statute does not render the act inapplicable.

"Complainants, however, have no standing to demand in this private litigation the abrogation of the lease, the restoration of the status of 1873, nor the sale by the Central of its Harlem stock. Such efforts are a usurpation of the functions of the executive; it does not lie in the power of private citizens to assume at will the duties of an Attorney General. (This was suit by stockholders.) Actions thus privately brought would be even more privately settled. The certain scandal and endless confusion resulting from such freedom of action are the sufficient reasons for cases like *National Fireproofing Co. v. Mason*, 169 Fed. 259."

The *Metcalf* case, *supra*, is exactly analagous, as we have hereinbefore pointed out upon the facts, to the one we are now discussing. The exact situation now being canvassed was therein presented, and among other things it was said (p. 123):

"The contract to purchase the plant of the Buffalo Company, in view of the determination of that Company to dissolve and discontinue business, was an enforceable contract. The American Company could not refuse to pay for the property bought, because of an asserted illegal combination; nor could the Buffalo Company refuse to convey after agreeing to do so. Such being the status of the vendor and vendee, complainant must be relegated to another remedy than that which she pursues for a vindication of any wrongs or damages sustained by her at the hands of the directors. As already stated, no fraud in the management of

the corporation or in the action of the majority stockholders is asserted in the bill, except inferentially, from the general charge of conspiracy to stifle competition in trade. The complainant could not prevent or control the lawful management of the affairs of the corporation, nor the discretion exercised in the sale of the property, unless it appears that such acts were *ultra vires* or in fraud of complainants' rights. The pleadings do not disclose such facts. Nor can the Company equitably rescind the sale because of any secret profit by the directors, or owing to their acceptance of an inadequate consideration. * * * In referring next to the actual transfer and its effect, it must not be overlooked that this was an executed contract. * * * Her right, as heretofore stated is not enlarged beyond that of the corporation. Her status is accordingly narrow and circumscribed. Title to property and its possession having passed to the grantee, the corporation is estopped from seeking a rescission of its contract. *A stockholder standing in the shoes of the corporation likewise is estopped from asserting the invalidity of such an act.* A court of equity would undoubtedly, at the suit of a stockholder, enjoin a threatened act by the corporation beyond its granted powers. But it is strenuously urged by complainant that the *ultra vires* acts invalidated the contract of sale. I think the weight of authority is against an interpretation of the doctrine of *ultra vires* as claimed by complainant. * * * 'It is a principle of universal application that whenever an illegal, immoral, or prohibited contract has been duly executed on both sides, the law will not lend its aid to either of the parties for the purpose of unraveling it and enabling him to recover what he may have lost through it.' In such cases the governing maxim is, '*In pari delicto potior est conditio defendentis*'. When therefore, a contract with a corporation, the making of which is beyond its granted powers,

has been duly executed by both parties, neither of them can assert its invalidity as a ground of relief against it."

In *Diamond Match Co. v. Kover*, 106 N. Y., 374, the Court said:

"We are not aware of any rule or law which makes the motive of the covenantor the test of the validity of such a contract; on the contrary, we supposed a party may legally purchase the trade and business of another for the very purpose of preventing competition, and the validity of the contract, if supported by the consideration, will depend upon the reasonableness as between the parties."

Nowhere in the act is it provided that the acquisition of property by illegal combinations shall be, by reason of such fact, void, now that any penalty shall be visited upon the corporation by the taking away of that property from it, unless, indeed, such may be done at a suit of the United States for the purpose of dissolving a monopoly, and then the property is only distributed in such a way as to prevent the monopolizing influences, and is never in any event given back to the seller.

Even admitting the sale of the property by the Alice Company to the Anaconda Company to have been in contravention of public policy, the wrong related to the public, and after the sale was completed, no injury, either in person or in property rights, arose which could be redressed by a suit either of the Alice Company or its stockholders.

As stated in *Wilder Mfg. Co., supra*, by Mr. Chief Justice White, the injury intended to be prevented is a public injury, and agencies have been provided therein for its redress. Whatever ethical standards the complainants, stockholders, may

have erected for themselves in relation to the propriety of the sale of the Alice property to a claimed trust or illegal combination, courts of equity cannot give effect thereto. High ideals are commendable, but when dissociated from personal or property wrongs to the complaining parties, violation of the same is not actionable.

In the case of *Santa Cruz v. Wykes*, *supra*, in discussing the question of the rescission of executed contracts made *ultra vires*, that Court on page 371 said:

"The principle applies not as an estoppel to the corporation, where the *ultra vires* contract is still executory, to set up its incapacity to entertain it; but where the contract has been executed—that is, fully and completely performed on both sides—the court will not interpose to restore either party his former estate, or grant other relief, but will leave the parties where it found them. * * * But in a much earlier case the doctrine is affirmed that though an illegal contract will not be enforced by the courts, yet where such a contract has been executed by the parties themselves, and the illegal object has been accomplished, the money or thing which was the price of it may be a legal consideration between the parties for a promise express or implied and the transaction will not be unraveled for the ascertainment of its origin."

In the case of *Houston & T. C. Ry. Co. v. Texas*, U. S. 44 Law Ed., foot page 688, wherein the Supreme Court of the United States was discussing the rescission of a contract entered into in violation of law and in contravention of public policy, it was said:

"After the complete execution of the transaction, it must be that each party thereupon

and at once, becomes possessed of certain legal rights arising from its performance. Neither party could undo what had been fully executed and completed, and the law therefore implies a contract, that neither party will attempt to do so; or, in other words, the law implies a contract that the payments made shall not be thereafter repudiated or denied. Any subsequent statute of the state, which repudiated or permitted the repudiation of the payments, would impair the obligations of the contract which the law raises from the transaction itself."

See also:

Long v. Georgia Pacific Railway Company, 91 Ala. 519;

Illinois Trust & Savings Bank v. Pacific Railway Company, 117 Cal. 332;

Planters' Bank v. Union Bank, 16 Wallace, 500.

But why pursue the subject? There is no contrariety or dissent in the authorities. This case falls within none of the exceptions or modifications of the rule. Clearly the Alice Company could not be granted relief in this suit. The plaintiff stockholders sue in a representative capacity. They do not sue as beneficiaries. Suing in a representative capacity, they cannot have relief on behalf of the Company, which the Company could not obtain upon its own behalf.

While this case does not proceed upon any common law theory, but is grounded wholly, as hereinbefore pointed out, upon the anti-trust act, it may not be impertinent to say that laying aside the anti-trust act, a stockholder could not, at common law, under circumstances of this character, maintain a suit to rescind the sale.

A very full and learned discussion of this question may be found in *Metcalf v. American Furniture Co.*, 122 Fed. 116, cited, *supra*, and hereinbefore quoted from at length.

The sole ground upon which the jurisdiction of courts of the United States is invoked is the questions presented touching the Sherman Anti-Trust Law. Before the decision of the case in the District Court, the case of *Wilder Mfg. Co. vs. Corn Products Refining Co.*, *supra*, clearly holding that this question was not available to the complainants, was decided. Long prior thereto the controlling principles upon which that case rests were repeatedly enunciated by this Court. Under these circumstances, when this appeal was taken from the Court of Appeals, the questions in this case arising upon the Sherman Anti-Trust Law were frivolous, and it might perhaps be plausible and reasonably argued that for this reason the appeal ought to be dismissed; but however this may be, and if indeed it ought not to be dismissed, it is nevertheless true that under these circumstances this Court will not do more, in the investigation of the other questions presented, than to examine the record sufficiently to determine whether or not *plain error* has been committed:

- Chicago Junction Ry. Co. *v.* King, 222 U. S. 220, 224;
- Southern Ry. Co. *v.* Gadd, 233 U. S. 572, 576;
- Yazoo & Mississippi R. R. Co. *v.* Wright, 235 U. S. 376, 378;
- C. & C. Merriam Co. *v.* Syndicate Pub. Co., 237 U. S. 618;
- Eichel, *et al.*, *v.* U. S. Fidelity & Guaranty Co., 245 U. S. 102.

II.

The purchase of the Alice properties would not tend to effectuate any illegal purpose to monopolize interstate commerce in copper, as alleged in complainants' bill, and would therefore neither be illegal nor against public policy.

The allegations contained in complainants' bill, and whatever proof they had, was directed to establishing that the Amalgamated Copper Company was formed with the purpose of monopolizing commerce in copper, and that the acquisition of the Alice properties was in the pursuit of such purpose. The undisputed evidence is that the Alice properties never were, and are not, copper producing. A great amount of development work has been performed upon the properties, and very large amounts of ore taken therefrom, the product of which has always been silver and gold and zinc. If any copper whatever is contained in the ores, its value is entirely negligible. Even its *situs* would not lead to any reasonable probability that any expenditures, however large, would result in its becoming copper producing. It is not within reasonable proximity to the copper zone, and practically all other properties upon the same lode have produced silver and gold and zinc. It clearly appears from the testimony of all who testified upon the point that it was its prospective zinc and silver values which induced the purchase, and that at the most the purchase was only speculative, and its future value entirely dependent upon the development of future processes adapted to the treatment

of zinc ores of the character contained therein. Even though the purchasers may have entertained a hope, under such circumstances, that copper might subsequently be found in the properties, the conclusion of the court cannot be based upon the same. Since then the productive power of the properties has been limited to metals other than copper, and it is apparent that the acquisition of these properties would not tend in the least to effectuate the evil purposes charged against the Amalgamated Copper Company in this suit, and not tending towards monopoly in this designated metal, the purchase would be entirely legal and not contrary to public policy, and certainly not inhibited by any provision of the anti-trust act. Not only this, but the acquisition of the property would be entirely collateral to the evil purposes charged against the wrongdoer; being collateral to such evil purposes, the law recognizes such a purchase as being free from any vice whatever, and it will not only sustain the same after the transfer has been accomplished, but if a contract of purchase existed between the parties which was entirely executory, specific performance would compel a compliance therewith. This is distinctly ruled, as we take it, in *Connolly v. Union Sewer Pipe Company*, *supra*, and the general principles will be found discussed in

Section 355, Moore on Interstate Commerce,

and standing alone, this one proposition would, in our judgment, necessarily, defeat the plaintiffs' claim that the sale of these properties ought to be rescinded because violative of the Sherman Anti-Trust Act, in that it tends to a monopoly in the copper commerce of the country.

III.

Neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company was at the time of the purchase of the Alice properties, neither had they ever been, illegal combinations in restraint of interstate commerce, and the Anaconda Company, under the circumstances disclosed in this case, had the legal right to acquire the Alice properties for the purposes and in the manner in which they were acquired.

In approaching this subject, it is necessary to inquire somewhat into the allegations of complainants' bill, and to discover whether or not these allegations are sustained by the proof.

Aside from the allegation that in the year 1899 certain individuals, with a view among other things, to control the production of copper and the supply thereof, and to fix and regulate the price thereof in the markets of the world, and to suppress competition in the sale thereof, organized the Amalgamated Copper Company, or caused the same to be organized, no essential material controverted allegation of complainants' bill has been supported by any evidence whatever. The allegation as to the intent with which the Amalgamated was organized is supported only to a limited extent by the testimony of Lawson, given under circumstances and in a manner which discredit it, and which is fully contradicted by the testimony of Burrage, as well as by fifteen years of unimpeachable conduct upon

the part of the Amalgamated. All other material allegations controverted in this case have not only no testimony to support them on the part of the complainants, but are emphatically disproved by uncontradicted and creditable testimony.

There is no testimony whatever tending to establish the allegation that the acquisitions of the Amalgamated of the stocks of the various mining companies in Butte were for the purpose of monopolizing interstate trade in copper products; neither is there any proof that in the year 1910, with such illegal purpose, and more effectually to carry the same out, the Amalgamated deemed it advisable for the Anaconda to become invested with the physical properties and with the title to the same, or to all the properties which, by development or operation, might give rise to any competition in the production or sale of copper. Neither is there any proof that the Amalgamated, in association with the Anaconda Company, for a like purpose, purchased the Clark properties. On the contrary, the proof distinctly shows that such was not the purpose. Neither is there any proof that the Amalgamated, with any evil purpose, or otherwise or at all, caused the Butte Coalition Company to be organized, or that it ever held a majority or controlling interest in said Company. On the contrary, the proof is positive that neither the Amalgamated nor the Anaconda had anything whatever to do with the organization of Butte Coalition, and that Amalgamated never at any time owned to exceed 50,000 shares of an issued capital stock of 1,000,000 shares, in said Company.

There is no proof that the Amalgamated or the Anaconda Company caused the Butte Coalition

Company to acquire a majority of the stock of the Alice Company.

There is no proof that the Amalgamated or Anaconda, prior to the year 1910, controlled and dominated the business and affairs of the Alice Gold and Silver Mining Company, or elected boards of directors of the Alice Company, or that they were in possession of the said Alice Gold and Silver Mining Company.

There is no proof that the Amalgamated or the Anaconda Company caused a meeting of the stockholders of the Alice Company to be held for the purpose of transferring the properties of the Alice to the Anaconda, or that they, or either of them, controlled the meeting of such stockholders. Neither is there any proof that the directors of the Alice Company acted under the direction or control of either the Amalgamated or Anaconda, but on the contrary the testimony shows that if any influence whatever was exercised over the Alice Company, its stockholders and directors, it was the influence which the Butte Coalition legitimately exercised by virtue of its ownership of a majority of the stock of that company; that the Butte Coalition Company was not related in any way, or in the least, under the domination of either the Amalgamated or the Anaconda, and that at no time did either of said companies own more than one-twentieth of the total issued capital stock of said Butte Coalition Company.

Thus understood, the sole question is here presented whether this sale may be avoided by stockholders of the Alice Company on account of the relations existing between the Amalgamated Company and the Anaconda Company, such Amalgamated Company owning a majority of the stock of the Anaconda Company, the Anaconda Company

being the purchaser; on account of the alleged trust character of the Amalgamated Company itself, claimed to have arisen out of the magnitude of its investments in the stock of Butte mining companies, and a claimed intention of its promoters, existing in 1899, to control the production and price of copper.

We do not understand the complainants, either by allegation or proof, to assert that either the Anaconda Company or the Amalgamated Company have ever restrained interstate trade in copper, or that they have ever, in the legal sense, monopolized the copper business in the United States, or, so far as commerce therein is concerned, between any of its states. Neither do they claim that either of said companies has ever brought about any of the evils against which the Sherman Anti-Trust Law is directed, and which are tersely stated in the Standard Oil case to be:

- (a) Raise the price to the consumers of the articles they affect;
- (b) Limit their production;
- (c) Deteriorate their quality.

But we understand it to be claimed that the Anaconda Company, by its acquisition of mining properties in the Butte District, and the Amalgamated Company by its control of the majority of the stock of the Anaconda Company at the time of the acquisition of the Alice properties, had the power to restrain competition in copper products, and that such power alone rendered them inimical to the law in question. Complainants' position can be better stated in the language of their brief. By

devious reasoning and in apposite authorities, they reach the following conclusion :

"If a combination tends to defeat competition, it is unlawful. Such was the character of the combination which has been the subject of this study" (Appellants' Brief in Court of Appeals, p. 139).

A new phase indeed, and wholly inadequate as a definition of a combination rendered illegal by the anti-trust law ; and a phrase which we venture to assert has never received deliberate judicial approval, and which does not measure to the standard established by the decisions of the Supreme Court of the United States. That it omits many elements which must be included before a combination becomes obnoxious, and that it is incorrect is clearly disclosed in many cases, including the *Du Pont* case, 188 Federal, 127, at page 150, from which we quote the language of the Circuit Court of Appeals, written by Judge Lanning, and concurred in by Judges Gray and Buffington :

"As enacted, it does not condemn every combination 'to prevent competition'. What it condemns is every combination in restraint of trade or commerce among the several states, etc. When the bill went from the Senate to the House, the latter body amended it by inserting a provision extending the scope of the act to all agreements entered into for the purpose of 'preventing competition' either in the purchase or sale of commodities, but the amendment was disagreed to. While there is a 'general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body' (*United States v. Freight Association*, 166 U. S. 318, 17 Sup. Ct. 540; 41 L. ed. 1007), that rule 'in the nature

of things is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law; that is, the history of the period when it was adopted' (Standard Oil Co. v. United States, 221 U. S. 50; 31 Sup. Ct. 512; 55 L. ed. 619 (34 L. R. A. (N. S.) 834; Ann. Cas. 1912D, 734), decided May 15, 1911).

"There is a distinction between restraint of competition and restraint of trade. The latter expression had, when the Anti-Trust Act was passed, a definite legal signification. Not every combination in restraint of competition was, in a legal sense, in restraint of trade. Two men in the same town engaged in the same business as competitors may unite in a copartnership, and thereafter, as between themselves, substitute co-operation for competition. Their combination restrains competition, and if their town is located near the line between two states, and each has been trading in both states, their combination restrains competition in interstate trade. But it does not necessarily follow that such restraint of competition is a restraint of interstate trade and commerce. The determination of whether it be so must depend upon the facts and circumstances of each individual case. It is undoubtedly the policy of the statute that competitive conditions in interstate trade should be maintained wherever their abolition would tend to suppress or diminish such trade. But this being true does not read into the statute a denunciation of all agreements that may restrain competition without regard to their purpose or direct effect to restrain 'trade or commerce among the several states.' To what extent the Anti-Trust Act condemns combinations that restrain full and free competition in interstate trade is a question that has been much debated. For a dozen years, at least, it has been settled that it does not condemn combinations which

only indirectly, remotely or incidentally restrain interstate trade.

"The recent decisions of the Supreme Court in *Standard Oil Co. v. United States*, and *American Tobacco Co. v. United States*, 221 U. S. 106, 31 Sup. Ct. 632, 55 L. Ed. 663, make it quite clear that the language of the Anti-Trust Act is not to receive that literal construction which will impair rather than enhance freedom of interstate commerce. As we read those decisions, restraint of interstate trade and restraint of competition in interstate trade are not interchangeable expressions. There may be, under the Anti-Trust Act, restraint of competition that does not amount to restraint of interstate trade, just as before the passage of the act there might have been restraint of competition that did not amount to a common-law restraint of trade. This fact was plainly recognized in *United States v. Joint Traffic Association*, 171 U. S. 505, 567; 19 Sup. Ct. 31; 43 L. Ed. 259, where Mr. Justice Peckham said:

"We might say that the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade. We are not aware that it has ever been claimed that a lease or purchase by a farmer, a manufacturer, or merchant of an additional farm, manufactory, or shop, or the withdrawal from business of any farmer, merchant, or manufacturer, restrained commerce or trade within the legal definition of that term."

Ex-President Taft, in his work on "The Anti-Trust Act and the Supreme Court," after a thorough

study of the decisions of the Supreme Court in cases arising under the Anti-Trust Act, says:

"The effect of the cases is that a mere union of capital in the same branch of industry, for the purpose of promoting economy and efficiency, though it uses interstate commerce, and though to the extent of the business of the two forms or companies it suppresses the competition of each against the other, is not within the statute unless what is done necessarily has the effect to control all the business or can be shown by the character of the acts to be intended to effect that purpose or to be a step in the plot to bring it about. Mere bigness is not an evidence of violating the act. It is the purpose and necessary effect of controlling prices and putting the industry under the domination of one management that is within the statute" (p. 112).

Again he says:

"The object of the anti-trust law was to suppress the abuses of business of the kind described. It was not to interfere with a great volume of capital which, concentrated under one organization, reduced the cost of production and made its profits thereby and took no advantage of its size by methods akin to duress to stifle competition with it. I wish to make this distinction as emphatic as possible, because I conceive that nothing could happen more destructive to the prosperity of this country than the loss of that great economy in production which has been and will be effected in all manufacturing lines by the employment of large capital under one management" (pp. 126-7).

A prolonged discussion of the alleged trust character of the Amalgamated Copper Company, dissociated from the relations which it held to the

Anaconda Company at the time of the acquisition of the Alice property, will not, in view of the circumstances of this case, greatly aid the court in deciding the question at issue, for at the time of the acquisition of the Alice property, the Amalgamated had ceased to control, by stock ownership, the various Butte companies in which it originally purchased stock, for it will be remembered that all the property of such companies had been purchased outright by the Anaconda Company, and the relations of the Amalgamated Company to the Anaconda Company were merely that of a majority stockholder in that company, subject to the same rights and privileges and responsibilities as any other majority stockholder in that company would be subject to, for transactions carried out by the Anaconda Company.

However, it may be said that the Amalgamated Company did not at any time, through its stock ownership, monopolize interstate commerce in copper, neither did it attempt to do so; neither did it ever have the *power* to do so. Neither does the evidence disclose that it was guilty of any act which was illegal, unlawful or indicated that it was either in effect or purpose an illegal combination prohibited by the Sherman anti-trust law.

Undoubtedly it was originally organized because it was believed that the acquisition of stocks in valuable mining properties would be a profitable business venture. Its ownership of these stocks never produced any of the evils against which the anti-trust law is directed. There is no evidence that it used its power to enhance the selling price of copper or to limit the production thereof, or to depreciate the quality of the product. The manner of its acquisition of the stocks of the several

companies was wholly unobjectionable, and bears no indication of having been unfair or having been obtained by illegal practices. It does not appear that it ever interfered with the internal control of the several companies.

The aggregate of capital finally employed in the acquisition of these stocks was large. Much stress appears to be laid upon this point by complainants' counsel. Undoubtedly the stocks were worth what was paid for them, and they were paid for in cash. Figures are always relative; while large in the aggregate, this sum may have been, and doubtless was, small in proportion to the aggregate amount of capital which would have been required to have obtained a monopolistic control over the production of copper in the United States.

No inference of evil can therefore be drawn from the amount of capital invested.

Much space is allotted in argument to inquiries as to why the promoters of this company did not acquire and own individually the stocks that they desired, instead of forming a corporation for the ownership of the same. We have been utterly unable to grasp the materiality of the inquiry. The control of the promoters, by personal ownership of the stock, would have been as complete as that of the corporation by its ownership of the same. The corporation was entirely legal. Its right to purchase stock is undisputed. No inference of wrongdoing can be drawn from any act, however, performed, if the same is legal and embraces no evil purpose. Monopoly of individuals is as offensive as monopoly of corporations. It therefore appears to us wholly immaterial whether these stocks were held by individuals collectively or collectively by a corporation. It has been too often adjudged to

be longer open to dispute, that the mere form which a combination takes is immaterial, but that the law, ignoring forms, looks to the substance, purpose and the result of the prohibited act.

During the control of these companies by the Amalgamated, the production of copper from the Butte mines, instead of decreasing, constantly increased. The sales of the same increased. There was no stifling of either production or competition. Although this production increased, it did not increase in the same ratio as the production of the United States as a whole. That production almost doubled. And it must be said, that if there was any purpose in the promoters of the Amalgamated Copper Company, through it, to monopolize the copper industry in the United States, that Company proved ineffectual to carry out such purpose, and not having the power to do so, any intention of the original promoters in that regard has proven to be wholly immaterial.

At a time when these companies controlled by the Amalgamated Copper Company, produced proportionately more of the copper of the United States than they did in 1910, the Supreme Court of the State of Montana, in the case of *MacGinniss v. Boston and Montana*, 29 Montana 428, had under review its alleged unlawful character. The question arose under the constitution of the State of Montana and our local law, designed to prevent trusts and combinations. It must be said that these laws reached all the evils designed to be prevented by the Sherman Anti-Trust Law, insofar as these evils affected the local situation. Indeed, our Constitution and statute are both more specific and broader in their provisions, if that were possible, than the law now under consideration.

(a) In that case it was held that a private individual could not undertake to enforce such laws, by a suit in equity; that this was the duty devolving upon the state.

(b) That the Amalgamated Copper Company had the right to acquire the stocks of the various companies which it acquired, provided that acquisition was not for the illegal purpose of restraining trade; in other words, that there must be an evil intent in the acquisition, that it will result and is for the purpose of contravening the statute and the constitutional provisions.

(c) The Amalgamated Copper Company had done nothing which would indicate any purpose to control commerce or to create a monopoly.

(d) That the mere possession of power upon the part of the Company to restrain trade, if it chooses to exercise it, is not sufficient to bring it within the punishments provided by law, and before it could be reached it must put that power into exercise.

We believe this decision not to be at variance with any controlling decision of the Courts of the United States, the same having been substantially held in many cases entirely analagous upon principle with this. But as we have above indicated, we believe that the situation of affairs, the relative position of the Anaconda Company in the copper world, the purpose, intent and effect of its acquisition of the Alice properties and other Butte properties, which it acquired in the year 1910, in connection with the relation borne to the Anaconda Company by the Amalgamated Company, which was at that time that of a majority stockholder, and the further fact that neither the Amalgamated

nor the Anaconda Company, in the year 1910, had the power to monopolize, either geographically or distributively, interstate commerce, and that the acquisition of the Alice properties did not render the acquisition of such power dangerously probable, are the questions of concern in determining whether such acquisition was contrary to the Sherman Anti-Trust Law.

At that time, and for many years prior thereto, all the properties of all the companies formerly controlled by the Amalgamated Company, through stock ownership, and afterward acquired by the Anaconda Copper Mining Company, in which the Amalgamated Company owned a majority of the stock, and all other acquired properties, produced only about twenty-one per cent. of the copper of the United States. The proportion produced by those companies of the whole in the United States had, for many years, decreased.

The acquisition of these properties by the Anaconda Company was an acquisition by purchase. True, they were not paid for in cash. We can hardly comprehend that a transaction becomes abnormal or unusual, simply because the purchaser must borrow the money, or because the purchaser issues stock in payment therefor.

However, this is of little consequence in the ultimate resolution of this question. Certainly none of the evils of monopoly either followed or preceded the acquisition of the copper properties at Butte by the Anaconda Copper Mining Company, and this must be one of the controlling tests in determining whether the combination effected was an unreasonable combination in restraint of trade and commerce.

No control had been exercised over the price of copper to increase it to the consumer. There had been no limitation of production, for the production was constantly increasing. There had been no deterioration in the quality of the product; no censurable influences had been brought to bear upon competitors; wages and working conditions had constantly improved.

Neither the Amalgamated nor the Anaconda Company had acquired the preponderate position in the copper business, nor sufficient power to render their acquisitions repugnant to the Sherman Anti-Trust Law, and the acquisition of the Alice properties did not render it dangerously probable that they would acquire such preponderate position, or if acquired, that they would use the same in violation thereof.

The controlling reasons, and that which induced these various acquisitions of property, are clearly set out by the testimony in the record. They were substantially as follows:

(a) Very large economies in management and production; thus enabling weak companies to continue operation.

(b) The final settlement and adjustment, as between stockholders and companies with divergent interests, without litigation, of apex rights upon which the very life of several of the companies depended,—rights of similar difficulties and of similar natures, as those which had formerly caused the Butte operators to waste their substance in violent and destructive litigation, and thus obviating large expenditures to determine the respective rights in relation to these matters.

(c) The acquisition of new properties to prolong the life of the Anaconda Company and make up for ore depletions which were constantly occurring in the natural operation of the same. In this regard, it was immaterial whether such acquisitions produced copper, silver, gold or zinc, provided they resulted in profit and took the place of depleted ore reserves.

That these were the prime factors leading to all acquisitions by the Anaconda Company of properties in the Butte District is made clearly to appear from the testimony of C. F. Kelley, set out in the foregoing statement of the case, subdivision V, and that they were legitimate and proper, and that such acquisitions would, in the long run, tend not to restrain interstate commerce in copper, but to facilitate the same, must be seen by anyone with a knowledge of the mining industry, and particularly anyone with a knowledge of mining events in the copper world.

Indeed, upon the results sought to be obtained by these acquisitions, would ultimately depend the very life of the mining industry in this state. For many years the general production in the United States has been rapidly increasing. Year after year the Butte properties produced less in proportion to the aggregate than formerly. Year after year, the demands for wages, and the expense of supplies and the requirements of improved mining conditions, have been enhancing the cost of production. Year after year the Butte mines have been growing deeper, and the ore reserves becoming baser.

Mr. Gillie's testimony shows that with all the acquisitions of the Clark and Heinze properties, at the time the Alice properties were acquired the

total ore reserves were not as great as they were in the several mining properties which were originally controlled through stock ownership by the Amalgamated Copper Company (see Tr., Vol. II, p. 942). In the meantime, almost inexhaustible porphyry deposits had been developed in Utah, Nevada, Arizona and New Mexico, where the copper, instead of being taken from 3,000 feet beneath the surface of the earth, was being taken out by steam shovels, and which production it is a matter of current history was much cheaper than the Butte District, and the amount of such production almost without limit.

Therefore, unless such economies could be brought about, and the life of the Butte mining camp extended, and apex controversies satisfactorily adjusted, it was inevitable that in the course of a few years the Butte district must cease to be a substantial competitor with the other copper companies of the United States.

Such being the purposes and objects of these acquisitions, and such purposes and objects being necessarily essential to the welfare of the companies, then any result, if any followed, tending to restrain interstate trade in this product would be indirect, and not condemned by the Sherman law, and any restraint occurring therefrom would not be unreasonable according to the authorities.

We invite the Court's attention to *Bigelow v. Calumet & Hecla*, 155 Federal, 869; same case, 167 Federal, 704 (District Court); same case, Circuit Court of Appeals, page 721. On page 712, it was said:

"We are thus brought to the question whether the necessary effect of the alleged combination is to restrain trade or create a monopoly. It is settled that a combination

does not violate the Federal Statute merely because it may indirectly, incidentally, or remotely restrain trade or tend toward monopoly. If its necessary effect is to stifle or to directly and substantially restrict interstate commerce, it falls under the ban of the law. On the other hand, if it only incidentally or indirectly restricts competition, while its main purpose and chief effect are to promote the business and increase the trade of the consumers, it is not denounced or voided by that law."

In the opinion of the Circuit Court of Appeals, affirming this case, on page 725 it is said:

"It is therefore well settled that it does not apply to restraints or monopolies as such, but only to those which directly and immediately, or those which necessarily affect commerce among the states or with foreign nations. If the law were held applicable to contracts or combinations indirectly or remotely affecting such commerce, it would substantially obliterate the distinction between interstate and intrastate commerce."

Again:

"The power of stock control which the Calumet Company has acquired, may be exercised only in legitimate and lawful ways in the interest of economical management of both companies. In that case it has done nothing effecting commerce among the states. On the other hand, that power may be a mere preparation for the doing of acts which will directly and necessarily interfere with the freedom of that kind of commerce which it is the purpose of Congress to protect. When this unlawful use of the power shall result in an unlawful restraint, or further steps shall point to results directly affecting such commerce, there may be interference by the courts."

Again:

"In a very convincing opinion, the judge who heard the case below states the leading facts which made it desirable and economical that there should be, to a certain extent, a co-operation in future mining operations by the two companies, in order that certain poorer lodes underlying the conglomerate lode of the Calumet Company, which has been worked to a point where exhaustion is in sight, may be worked to the best advantage of both companies. We shall not go into the details. We refer and adopt the conclusion stated by Judge Knappen: 'I am convinced, from a careful consideration of the testimony, that the controlling motive and purpose of the Calumet & Hecla Company in acquiring its interest in the mining properties mentioned, was to extend its industrial life, and keep up and increase, if possible, its production and net earnings, and that the evidence fairly negatives a design thereby to reduce the output of any of the companies or artificially to increase or maintain the price of the product, or to stifle competition between the related companies, or to prejudice other stockholders generally of either company associated, or to interfere with the integrity of either company, a common management with separate detailed organization being contemplated. The evidence does not indicate that any use of the facilities of the associated companies is contemplated, except upon terms and in manner mutually advantageous.'"

By reference to the first citation, 155 Federal, it will be disclosed that the issue in this case included not only a mere combination in production but a combination in the marketing and sale of the copper products in interstate commerce. The authority of the case is vigorously assailed by the

appellants by the assertion that the same has been practically overruled, and it is said that the decision is grounded squarely upon the Knight case, which it is said has been modified to such an extent as to make it inapplicable. We say, however, that the facts of the Bigelow case being analagous, and the reasoning of the several decisions sufficient to sustain the conclusion, that the fact, if it be such, that the Knight case was approvingly mentioned in the opinion and that it was not in all respects applicable, does not destroy the force of the precedent, and that enough remains in the argument to show, together with the authorities cited, that notwithstanding any misapplication of the Knight case to the facts of the Bigelow case, the decisions must necessarily have been the same.

In *Standard Oil Co. v. U. S.*, 221 U. S. 1, 66, the following from the case of *Hopkins v. United States*, was quoted with approval:

"To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act."

The rule announced in the *Standard Oil* and *Tobacco* cases, that in order to be inhibited, the restraint accomplished must be unreasonable and undue, is the corollary of the rule in relation to direct and indirect effect, to which we have heretofore referred, and whichever principle is appealed to, both being substantially alike, the same result

will be attained. In the Standard Oil case, page 58, the rule of unreasonable restraint is thus stated :

“Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonable forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such an enhancement of prices, which were considered to be against public policy.”

After analyzing the statute, the court on page 60, said :

“The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate foreign commerce, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an inference that is an undue restraint.

"c. And as the contracts or acts embraced in the provision were not expressly defined, since the enumeration addressed itself simply to classes of acts, those classes being broad enough to embrace every conceivable contract or combination which could be made concerning trade or commerce or the subjects of such commerce, and thus caused any act done by any of the enumerated methods anywhere in the whole field of human activity to be illegal if in restraint of trade, it inevitably follows that the provision necessarily called for the exercise of judgment which required that some standard should be resorted to for the purpose of determining whether the prohibitions contained in the statute had or had not in any given case been violated. Thus not specifying but indubitably contemplating and requiring a standard, it follows that it was intended that the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute, was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided."

Again it is said on page 62:

"In other words, that freedom to contract was the essence of freedom of undue restraint on the right to contract."

The rule was further elucidated by its restatement in the case of *The United States v. American Tobacco Company*, 221 U. S. 106, wherein, on page 178, it is said:

"The obscurity and resulting uncertainty, however, is now but an abstraction because it has been removed by the consideration which we have given quite recently to the construction of the Anti-trust Act in the *Standard Oil*

case. In that case it was held, without departing from any previous decision of the court that as the statute had not defined the words restraint of trade, it became necessary to construe those words, a duty which could only be discharged by a resort to reason * * * (citing cases). That such view was a mistaken one was fully pointed out in the Standard Oil case and is additionally shown by a passage in the opinion in the Joint Traffic Case as follows (171 U. S. 568): 'The Act of Congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing on interstate commerce, and possibly to restrain it.' Applying the rule of reason to the construction of the statute, it was held in the Standard Oil case that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-Trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose. In other words, it was held, not that acts which the statute prohibited could be removed from the control of its prohibitions by a finding that they were reasonable, but that the duty to interpret which inevitably arose from the general character of the term restraint required that the words restraint of

trade should be given a meaning which would not destroy the individual right to contract and render difficult if not impossible any movement of trade in the channels of interstate commerce—the free movement of which it was the purpose of the statute to protect. The soundness of the rule that the statute should receive a reasonable construction, after further mature deliberation, we see no reason to doubt. Indeed, the necessity for not departing in this case from the standard of the rule of reason which is universal in its application is so plainly required in order to give effect to the remedial purposes which the act under consideration contemplates, and to prevent that act from destroying all liberty of contract and all substantial right to trade, and thus causing the act to be at war with itself by annihilating the fundamental right of freedom to trade which, on the very face of the act, it was enacted to preserve, is illustrated by the record before us.”

In reference to the similarity of the rules, in reference to direct and indirect results, and legal and proper intents and purposes, as distinguished from those which are illegal and improper, and the rule in reference to reasonable and unreasonable restraints, in the Standard Oil case, on page 66, it was said:

“If the criterion by which it is to be determined in all cases whether every contract, combination, etc., is a restraint of trade within the intendment of the law, is the direct or indirect effect of the acts involved, then of course the rule of reason becomes the guide, and the construction which we have given the statute, instead of being refuted by the cases relied upon, is by those cases demonstrated to be correct. This is true, because as the construction which we have deduced from the

history of the act and the analysis of its text is simply that in every case where it is claimed that an act or acts are in violation of the statute the rule of reason, in the light of the principles of law and the public policy which the act embodies, must be applied. *From this it follows, since that rule and the result of the test as to direct or indirect, in their ultimate aspect, come to one and the same thing, that the difference between the two is therefore only that which obtains between things which do not differ at all."*

Applying therefore to the facts of the acquisition of the properties of the several mining companies in Butte by the Anaconda Copper Mining Company, the rules hereinbefore stated, it becomes immediately apparent that such acquisition did not amount to a violation of the Sherman Act. Neither did it, nor could it, result in an undue or unreasonable restraint of trade as that term is legally understood and interpreted.

The testimony of Mr. Kelley, hereinbefore set out at length, shows that the controlling purposes in these acquisitions were not to restrain or monopolize trade, but were to bring about large and essential economies in the production of copper; to save many of these companies from actually operating at a loss; to prevent the necessity of expending unlimited amounts of money in determining the apex rights of the various companies in order to protect the diversified stock interests held therein; and also to save enormous expenditures in maintaining and keeping up separate workings in the several companies; and carrying on separate and independent development work, all of which might well be done together; and the acquisition of the Alice property particularly, as well as many

others, was for the purpose of preventing the life of the company being extinguished and its usefulness ended by the depletion of its ore reserves.

The testimony of Mr. Gillie shows that with all the acquisitions of the Alice properties, the Clark properties and the Heinze properties, the ore reserves of the Anaconda Copper Mining Company combined, were not equal to what the ore reserves were of the several companies whose control was acquired by the Amalgamated Company in the year 1899.

These things were entirely legitimate; these purposes are free from fault. They demonstrate only the exercise of ordinary business prudence. Their essential tendency was, as we have hereinbefore pointed out, not to restrain, but to ultimately expand and develop interstate trade in the copper product. Such being so, whatever incidental restraint of either competition or commerce (the two being distinguishable), arose out of these acquisitions, must be held under the authority of all the cases to be indirect, collateral, incidental, and not inhibited by the Anti-trust Act. Also, whatever restraint, if any, incidentally arose, either to competition or to interstate trade, was not undue, neither was it unreasonable; but quite the contrary, under the definitions hereinbefore quoted. Can it be said to have been an unreasonable exercise of inherent right of every company or individual, to contract for its own advancement to acquire these properties, when the acquisition was absolutely essential for the purposes hereinbefore stated? The acquisition was lawful; it was a reasonable exercise of the contracting power of the corporation in its direct purpose, and no unlawful intent was entertained. Its ultimate result will

be, as the Court knows, to enable the Butte camp to operate many years longer than it would be enabled to operate under the system of independent companies and organizations, all of which leads unerringly to a result beneficial to the interstate trade in the copper product. Such being true, the acquisition of these properties must be held to be altogether legal, and a legitimate exercise of the corporate power of the Anaconda Copper Mining Company to maintain and continue its own existence, and to carry out the purpose for which it was organized.

In complainants' brief, the following is quoted from Judge Smith's opinion in the International Harvester Company case, 214 Federal 987, the same being a case greatly relied upon by the complainants in their argument:

"Suppression of competition, where the parties to a combination control a large portion of the interstate or foreign commerce in the article, and where there is no obligation to form the combination, arising out of the fact that the parties to the same are losing money or the like, has been held an undue restraint of trade."

If the fact that the parties are "losing money or the like" would entitle those controlling a large portion of the interstate or foreign commerce in an article, to enter into a combination in relation to the same, then would not the facts hereinbefore set out authorize the acquisition of competing properties in the same neighborhood, when the entire acquisition did not produce more than twenty-five per cent of the total output of the product in the United States? Certainly the impelling reasons for these acquisitions in the case at bar fall within the lan-

guage of the decision "losing money or the like," and fully justify the acquisition of this property.

Again, in the complainants' brief, the following, from the same case, is quoted with entire approval:

"If the five companies which formed the International had been small, and their combination had been essential to enable them to compete with large corporations in the same line, then their uniting would, in the light of reason, not have been in the restraint of trade, but in the furtherance of it; but when they constituted the largest manufacturers of their articles in America, if not in the world, and held jointly about eighty to eighty-five per cent of the trade, and two, at least, of the companies forming the combination were prosperous, their combining was, when similarly viewed, an unreasonable restraint of trade."

By the adoption of this language as a correct statement, the complainants have overthrown their own contention.

It clearly appears from the evidence in this case, as hereinbefore pointed out, that the economies brought about by the acquisition of the properties acquired by the Anaconda Company were absolutely essential to enable these companies to continue to be successful competitors, with a reasonable profit, against the other copper producers of the United States, and that these acquisitions were also absolutely essential in order that the life of the company might be prolonged, and it be enabled to continue to carry out its corporate purposes; and the reasons for these acquisitions pointed out in the testimony are certainly more cogent than the reasons assumed in the excerpt from the Harvester case as being sufficient to render combinations of independent manufacturers and dealers in agricultural implements entirely lawful.

The following excerpt from the same case appears to be greatly relied upon by complainants:

"We think it may be laid down as a general rule that if companies could not make a legal contract as to prices, or as to collateral services, they could not legally unite, and as the companies named did in effect unite, the sole question is as to whether they could have agreed upon prices and what collateral services they could render when their companies were all prosperous and they jointly controlled eighty to eighty-five per cent of the business in that line in the United States."

It is unnecessary to inquire at length as to the technical accuracy of this statement. Taken in its entirety it is not pertinent to the case at bar.

We shall not attempt to determine when companies may unite on prices, but we assert that it has been determined under exactly what circumstances one company may acquire the property of another; or two or more companies may unite in the operation of their business by the Standard Oil and Tobacco cases, hereinbefore referred to, and while this statement might have the effect to extend the application of the rules therein set out to the case of an agreement on prices, it cannot have the effect of limiting, modifying or changing the rules therein announced in reference to acquisition of property. We think, however, that the statement is unsound, and for the reason, among others, that it has been thoroughly demonstrated by the authorities that one company may acquire the property of another, or two or more companies may unite, when the main and direct purpose is to prevent the losing of money, to continue the life of the organization and its business, to put in force economies which enable it to compete with others more advantage-

ously situated, although the indirect effect of such acquisition or combination may be to restrain commerce or raise the price of the article sold, whereas, any agreement to raise prices, between companies, must necessarily have for its purpose a direct effect upon trade and commerce, and might therefore bring about the evils condemned by the Act.

While we find nothing in the *Harvester* case which, in our judgment, controls the case at bar, we may be permitted to say that the quotations made from that case by the counsel do not appear to have been the opinion of the court. Three opinions were prepared and handed down. All the excerpts from the case are from the opinion of Judge Smith, who wrote the leading opinion in the case. Judge Hook handed down an independent opinion in which he makes no reference whatever, either of approval or disapproval, to the reasoning of Judge Smith, except upon one point, and this one point is in fact the only point of concurrence among the three judges who decided the case, and that point is that the combination of dealers and manufacturers of agricultural implements, controlling from eighty to eighty-five per cent of the entire product of the United States, and located in different states, engaged in interstate commerce, necessarily, on account of its magnitude, resulted in a restraint of trade between the States.

Judge Sanborn, for whom both the lawyers and the judges of the country have long entertained a profound respect, dissented. But it clearly appears from that case that if this case were being considered upon the same principles, as was the *Harvester* case, the case would not be ruled adversely to appellants thereby, and this may be conclusively developed and demonstrated in a few words. In

the Harvester case, the combined companies from the outset, controlled from eighty to eighty-five per cent of the entire production and trade in agricultural implements. It appears from the opinion of Judge Smith that that percentage was afterwards increased, to exactly what extent cannot be ascertained. The decree of the Court in reference to the dissolution of this combination is as follows:

"It will therefore be ordered that the entire combination and monopoly be dissolved, that the defendants have ninety days within which to report to the court a plan for the dissolution of the entire unlawful business into at least three substantially equal, separate, distinct and independent corporations, with wholly separate owners and stockholders."

The Court will observe that after the combination was divided into three distinct, separate, equal corporations, each of these corporations would be in absolute control, upon equal terms, with every other corporation, of practically thirty per cent of the entire agricultural implement product of the United States; so re-organized, the Court deemed each organization lawful and not in contravention of the Anti-Trust law.

In the case of the Anaconda Copper Mining Company, with all of its acquisitions, it now, and at all times for many years past, has only controlled a fraction over twenty-one per cent of the entire copper production of the United States, and each year it controls proportionately less, and the Court also knows, from the testimony, that this production is carried on under conditions greatly adverse to those enjoyed by the great bulk of the copper producers of the United States in its production. Furthermore, the copper production of the

Anaconda Copper Mining Company, and all the copper production of the United States, has strong competition from the copper mines of Mexico and other countries of the world, whereas, the market in the United States for agricultural implements is essentially confined to those produced therein. Thus, the final result of the International Harvester Company case is a direct authority which, if allowed, would lead to a denial of the relief insisted on by the complainants.

But it is said that it is not essential that either the Amalgamated Copper Company or the Anaconda Copper Mining Company shall have brought about any of the evils against which the Anti-Trust law is directed, but that if either of them have the power on account of the magnitude of their holdings, to restrain trade or commerce, that they therefore become inimical to the law, and subject to dissolution, which dissolution is now sought in part at least by complainants in this case by taking away from the Anaconda Company the Alice properties. That which does not exist of course cannot be dissolved, and although the Anaconda Company might threaten a monopoly, this, of course, could be effectually restrained without its disintegration. But we assert that nothing appears in the evidence showing that either the Amalgamated or Anaconda Company has the power, on account of the magnitude of its holdings, to create a monopoly, either in whole or in part, of the trade in copper, or that either ever attained that preponderating influence in the copper business which is essential before it can be held to have violated or threatened violation of the law.

All authorities agree that any combination to be

violative of the Sherman Anti-Trust law must have obtained control of at least a preponderating part of the commerce in some particular article. The word "preponderating" may not mean the same in every case, but in the absence of some exceptional or extraordinary circumstances, such as the control of transportation facilities, or a monopolization of a raw product out of which the article is produced, or the like, none of which appears in the instant case, then preponderating influence can only be obtained by the engrossment of more than the major part of commerce, between the states, in some particular article.

Neither Amalgamated nor Anaconda can truthfully be said to have had a preponderating influence in the copper commerce of the United States, when the total amount of their copper production is less than twenty-five per cent of the whole, and when they do not, by any trade contracts or control of transportation facilities, or otherwise, control the sale of copper in any geographical division of the country.

Neither can it be said that, controlling less than twenty-five per cent of the copper of the United States, which percentage is constantly decreasing, even though such control were created with an unlawful intent to monopolize interstate trade, the acquisition of the Alice properties, bearing zinc and silver only, would bring about a dangerous probability that either of said companies would ultimately engross a preponderating part of the commerce in copper, without one or the other of which there can be no violation of the Sherman Anti-Trust law.

In an article in the *Columbia Law Review* for

December, 1910, Volume 10, page 687, Mr. Morawetz states that:

"According to common usage in modern times, the phrase 'to monopolize commerce' means by the elimination of competition to secure to some individual or group of individuals control of all or of a largely preponderating part of the commerce in some article."

In the *Standard Oil* case, page 61, in referring to the section against monopolies, the Supreme Court thus interprets the same:

"The commerce referred to by the words 'any part' construed in the light of the manifest purpose of the statute has both a geographical and a distributive significance, that is, it includes any portion of the United States and any one of the classes of things forming a part of interstate or foreign commerce."

In other words, before there can be a monopoly, one of the classes of things, or one product which is in interstate commerce, must be monopolized in some geographical subdivision of the United States. Now, it is perfectly clear that the Anaconda Copper Mining Company has no power to monopolize copper, which is one of the classes of things mentioned, in any geographical subdivision of the United States. Its whole product is sold and must be sold, in every geographical subdivision of the United States, with the other copper producers of the United States, who produce over three-fourths of the product; and also with the copper producers of Mexico and other producers of the world, and neither the Anaconda Copper Mining Company nor the Amalgamated Copper Company has the power, on account of the fact that they produce less than twenty-five per cent of the copper of the United

States, to exclude from any geographical subdivision of the United States the competitors which now exist, and for years past have existed.

The decisions touching combination of competing lines of railway, of course, have no bearing upon this situation. Products shipped in interstate commerce over lines of railway, must be shipped over those adjacent. There is no escape from this. Therefore, a combination between the Great Northern Railway Company and the Northern Pacific would, at every common point touched or served by those lines, necessarily result in a monopoly in all shipments arising from those compelled to ship from such common points. Moreover, we assert that the authorities do not justify the conclusion that the mere possession of power to do an illegal act, or to form a monopoly, either in whole or in part, renders the corporation possessing such power amenable to the Anti-trust law. It is true that there are some expressions in some of the cases from which such an implication might be drawn, but in every instance such expressions will be found to be either absolutely *obiter*, or to have been used in the case that the power possessed by the combination necessarily resulted in a stifling of trade in interstate commerce; that the power, even if possessed, must be either exercised, or that there must be a dangerous probability of its immediate exercise, before the law will be brought to bear upon such a combination or corporation, is so abundantly settled by the authorities that the question is not open to serious controversy.

In Moore on Interstate Commerce, Section 337, it is said :

"The test of an unlawful combination under the Anti-Trust Act is its necessary effect upon free competition in commerce among the states or foreign nations."

In *Swift Company v. United States*, 196 U. S. page 396, it was said:

"Where acts are not sufficient in themselves to produce a result which the law seeks to prevent—for instance the monopoly—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen."

Again, in the same case, page 402, it was said:

"Not every act that may be done with intent to produce an unlawful result is unlawful, or constitutes an attempt. It is a question of proximity and degree. The distinction between mere preparation and attempt is well known in the criminal law" (citing cases).

On this point it was said in the *Standard Oil* case, on page 60:

"The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, *which did not unduly restrain interstate or foreign commerce*, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an interference that is an undue restraint."

In the same case, page 64, referring to the decision in the case of the *United States v. Freight Association*, and *United States v. Joint Traffic Association*, the Court said:

"As the cases cannot by any possible conception be treated as authoritative without the certitude that reason was resorted to for the purpose of deciding them, it follows as a

matter of course that it must have been held by the light of reason, since the conclusion could not have been otherwise reached, that the assailed contracts or agreements were within the general enumeration of the statute, and that their operation and effect brought about the *restraint of trade* which the statute prohibited. This being inevitable, the deduction can in reason only be this: That in the cases relied upon it having been found that the acts complained of were within the statute and operated to produce the injuries which the statute forbade, that resort to reason was not permissible in order to allow that to be done which the statute prohibited. This being true, the rulings in the cases relied upon when rightly appreciated were therefore this and nothing more. That as considering the contracts or agreements, their necessary effect and the character of the parties by whom they were made, they were clearly *restraints of trade within the purview of the statute*, they could not be taken out of that category by indulging in general reasoning as to the expediency or non-expediency of having made the contracts or the wisdom or want of wisdom of the statute which prohibited their being made."

In the Hopkins case, cited with approval in the Standard Oil case, page 66, the Supreme Court said:

"There must be some direct and immediate effect upon interstate commerce in order to come within the Act."

In the Addyston Pipe & Steel Company case, 175 U. S., page 244, it was said:

"We have no doubt that where the direct and immediate effect of a contract or combination among particular dealers in a commodity is to destroy competition between them and

others, so that the parties to the contract or combination may obtain increased prices for themselves, such contract or combination amounts to a restraint of trade in the commodity."

In *United States v. Union Pacific*, 226 U. S. page 82, the Supreme Court quoted the following with approval from *United States v. Joint Traffic Association*:

"It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all the matters over which the combination extends, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and to prohibit."

Again, in that case, on page 86, it is said:

"If it is true, as contended by the Government, that a stock interest sufficient for the purpose was obtained in the Southern Pacific Company, with a view to securing the control of that company, and thus destroying or restricting competition with the Union Pacific in interstate trade, the transaction was in our opinion within the terms of the statute."

We have already pointed out the difference in the situation of two combining railroads, serving the same territory, and the combination which is now being discussed. Each independent road is a monopoly to a very large extent in and of itself, and the combination of two roads serving the same territory only enlarges that monopoly. A shipper residing at a common point touched by two rail-

roads only, has no choice except to snip over one or the other. Therefore, if the two be combined, the monopoly of one is extended to the monopoly of the two, and geographically it becomes a complete monopoly, against which, or with which, no other railroad company can possibly compete. It must therefore necessarily restrict interstate commerce.

The distinction is apparent between this situation and the situation of the Anaconda Copper Mining Company selling its products in every geographical subdivision of the United States in direct competition with that of every other producer, both in the United States and elsewhere, and from which territory, or no part of which, any producer or seller could possibly be excluded.

In the Northern Securities Case, 193 U. S. page 331, the Court said:

"The Act declares illegal every contract, combination or conspiracy, in whatever form, of whatever nature, and whoever may be the parties to it, *which directly or necessarily operates in restraint of trade or commerce among the several states.*"

Moreover, there is a distinct difference between public corporations, such as railroads, and private ones, such as mining companies, which is clearly pointed out in

United States v. Freight Assn., 166 U. S. 334.

The case of International Harvester Company v. Missouri, 234 U. S., cited by complainants, has no application. In that case the Supreme Court was construing a statute of the State of Missouri, the most casual reading of which will demonstrate to

have been much broader in its terms and more drastic in its provisions than the Sherman Anti-Trust law. It has already been construed by the Supreme Court of the State of Missouri, and of course such construction was in the main controlling upon the Supreme Court of the United States. The statute of the State of Missouri was directed against, not only restraint of trade and commerce, "but also against all acts which would tend to lessen full and free competition". No such language as this is found in the federal Statute, and it has been expressly ruled not to be so comprehensive.

United States v. E. I. DuPont, 188 Fed. 127.

The O'Halloran case, 207 Federal, 188, is quoted from in complainants' brief as tending to show that power only is essential to render a corporation or combination unlawful. An examination of the case shows that the remarks in reference to power only were not at all essential to its decision, and the statement being *obiter*, the learned judge did not use that precision or accuracy of expression which might reasonably have been expected, had the question been essential. Other portions of the paragraph quoted show beyond question that it was not used in the sense now attributed to it by counsel. Other declarations of the Court show that the rule as contended for by us met its full concurrence. On page 189 it was said:

"So far as the intent of the defendants is involved, they are presumed to have intended the necessary, natural and known effects or consequences of their agreements and acts, and if these effects or consequences be to unduly

restrain interstate trade and commerce, then the combination is illegal and the participants are chargeable with the consequences."

Again, on page 191, the Court said :

"But when those theretofore engaged independently in producing and selling an article combine their money, intelligence and effort for the purpose of limiting the supply and controlling the supply and controlling the prices of such article, and destroying competition, and they interfere with interstate commerce, or their combination is such as in its operation and execution will bring about these results, they have become violators of the statute referred to, regardless of intent."

Certainly mere power would not subject the Anaconda Copper Mining Company to the forfeiture of its property at the suit of a stockholder of the seller; neither would it, upon the suit of the United States. Power, coupled with a wrongful attempt, realizing a dangerous probability, might subject the corporation, at the suit of the government, to the preventive remedy of injunction, but not to a dissolution or to disintegration. It is only when monopoly actually exists and no other remedy is apparent, that the unlawful combination will be dismembered. Upon this point in the Standard Oil Case, on page 77, it was said :

"It may be conceded that ordinarily, where it was found that acts had been done in violation of the statute, adequate measure of relief would result from restraining the doing of such acts in the future. Swift v. United States, 196 U. S. 375. But in a case like this, where the condition which has been brought about in violation of the statute, in and of itself is not only a continued attempt to monopolize, but

also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies."

Some pages of Appellants' brief are devoted to a discussion of the testimony of one Lawson, which it is claimed discloses that it was the intent of the original promoters of the Amalgamated Copper Company to form an unlawful combination to monopolize the copper industry of the world. In view of the admission contained in Appellants' brief, and the statement of the grounds upon which they rely, we are unable to understand why they should have called attention to this testimony at all, unless it be that it is thought to be entertaining. In the brief of Appellants' in the Court of Appeals, it is said:

"The intent with which the combination assailed in this case was formed is clear from its history without this direct evidence of the ends sought to be accomplished by its rejectors, but the intent in this case is of very little consequence, the necessary effect of the combination being to place in the Amalgamated the power to restrain trade, the proof of intent to accomplish such restraint is unnecessary. It is only where it does not appear that the 'inherent nature and effect' of the combination is to restrain trade that the proof of intent becomes material" (See page 132).

In view of this admission by appellants it would seem unnecessary to take notice of the testimony of Lawson, as it is clearly herein stated that this testimony has no influence upon the determination of the question of the legality or illegality of the acquisition of the Alice properties by the Anaconda Company. Testimony to establish wrong-doing of this character must be clear, convincing and con-

clusive, and the testimony upon the point of this intention fails to satisfactorily establish it. A reading of the Lawson testimony impresses one with its improbability. Such a scheme as outlined by him would hardly have been entertained by men with business acumen like unto that possessed by Mr. Rogers and Mr. Burrage, his associate. In short, it appeared to be a project to corner all the money in the world and then with that money to buy the big round world itself. The manner of the examination of Mr. Lawson condemns his evidence. A voluntary and willing witness for the complainants, he was persistently led in the examination by references and quotations from public statements made by him for hire through *Everybody's Magazine*, when he was engaged in the business of "muck-raking" during the "muck-raking" era, which happily now appears to have largely passed away. Having been placed in such a situation by the counsel of the parties for whom he appeared, it was the most natural thing in the world that even at the expense of his conscience, he would assert that that which he had so solemnly stated in the public prints was not open to question. Indeed, the situation in which he was trapped would, in the absence of time for deliberation, naturally lead to this result. Aside from the inherent improbability of his statements, he is substantially contradicted by Mr. Burrage's testimony, and by all the circumstances surrounding the organization of the Amalgamated. His statements are rendered further improbable by the utter impossibility of even such powerful financial interests as those represented by Mr. Rogers carrying out the details of the disclosed plan, and fifteen years of unimpeachable conduct upon the part of the Amalgamated

Copper Company and the Anaconda Copper Mining Company, furnish irrefragable proof that his statements in regard to the unlawful intent of the promoters of the Amalgamated are not substantially correct; but even admitting their truth, we are unable to conceive upon what legal principle such an unlawful intent can furnish ground for the rescission of the purchase of the Alice properties. There is positively no evidence that such intent was ever put into effect by an attempt to monopolize, and even if it could be said that such an attempt was made, it must be said that it has proven to be entirely ineffectual; and an ineffectual attempt at combination, with an intent to monopolize, would fall far short upon well known legal principles of furnishing ground for the rescission of the purchase being considered. Neither Amalgamated nor Anaconda ever obtained a preponderating influence in the commerce in copper; neither ever had the power or reached so near attaining such power as to render it dangerously probable that interstate commerce in copper would be monopolized, and each year since the organization of the Amalgamated Company has brought both the Amalgamated and the Anaconda farther and farther away from such a preponderating control of the commerce in copper as would render either corporation objectionable. But there is a further consideration. It will be remembered that the Anaconda Company was a corporation long prior to the organization of the Amalgamated. It owned property, had property rights and thousands of stockholders. Since the organization of the Amalgamated it has acquired a majority of the stock of the Anaconda Company, and we are not advised upon what principle an unlawful intent, entertained

by the promoters of the Amalgamated Company at the time of its organization, and by men, some of whom were never connected with it in any way or had any legal capacity to act for it after it became a corporation, can, ten or twelve years thereafter be imputed to the Anaconda Company, so as to take away from it property which it has purchased, and thus vicariously punish the thousands of innocent stockholders and other persons holding the securities of that company. It is neither law nor logic to punish vicariously or to visit the sins of the parents upon the children even unto the third and fourth generations.

United States v. E. I. DuPont Company,
188 Federal, 127.

This case, as presented by complainants has, in our judgment, never been ruled upon the facts in any other case. To sustain the contention of complainants would make the Sherman Anti-Trust Law so comprehensive in its operation as to render it ridiculous in the extreme. In all other cases which have been the subject of serious consideration by the courts, arising out of the Sherman Anti-Trust Law, there have been controlling facts which do not appear herein. In some there has been actual monopolization by unity of control of competing railroads. In some there has been actual monopolization arising as a necessary consequence of the combination having secured control of more than a majority of the trade in designated articles, and in almost every instance from seventy-five to one hundred per cent thereof. In some there have been actual contracts, dividing territory and restricting commerce. In others, together with these elements, or some of these elements, there have been viola-

tions of law, unjust treatment of competitors, espionage, and other evidence, showing conclusively an illegal purpose and an unlawful intent. In no case has a combination been declared illegal and unlawful simply on account of the magnitude of its investments, without other facts giving to its transactions a criminal color.

In the Standard Oil case, although the Standard Oil Company and its subsidiaries transported more than four-fifths of the petroleum derived from the Pennsylvania and Indiana oil fields, manufactured more than three-fourths of all the crude oil refined in the United States, owned and operated more than one-half of all the tank cars used to distribute its products, marketed more than four-fifths of all the illuminating oil sold in the United States, exported more than four-fifths of all the illuminating oil sent forth from the United States, sold more than four-fifths of all the naphtha sold in the United States, and sold more than nine-tenths of all the lubricating oil sold to railroad companies in the United States, the Supreme Court did not base its decision adverse to that Company upon these facts, but upon its destruction of the potentiality of competition, and upon its methods of business adapted for the purpose of excluding others from the trade, and upon its acts and dealings done with the intent to drive others from the field and to exclude them from their right to trade.

Likewise, in the American Tobacco Company case. That Company produced from 70 to 96 per cent of the various kinds of tobacco products in the United States, but the decision was based upon the business methods used by it to drive competitors out of business.

Likewise, an examination of all other cases de-

cided by the Supreme Court of the United States will disclose that no decision has ever been based alone upon the magnitude of the investments of the offending corporations, but other elements have been made the basis therefor; and never has it heretofore been asserted that control by one Company of less than one-fourth of an article of commerce in the United States would subject the offending corporation to any of the penalties of the Sherman Anti-Trust Law. We therefore say it is not ruled upon the facts by any precedent so much as it is ruled by reason, and when viewed in the light of reason, as it must be, the contentions of the complainants "vanish into thin air".

It will be hardly conceived upon what principle the purchase of a silver and zinc property by the Anaconda Company, a company controlling less than twenty-five per cent of the commerce in copper within the United States, would tend to defeat competition in the copper markets of the world, and therefore could be set aside and rescinded by a dissenting stockholder of the seller. The simple statement of the proposition bears upon its face its own refutation.

From the foregoing, we confidently assert that the decree of the Court below should have gone unconditionally in favor of the Appellees; that there should have been no interlocutory decree; that the errors of the Court touching its findings of fact, as well as its conclusions of law, detrimental to the rights of the Appellees in this case, should be now corrected; and without further consideration as to the regularity of the proceedings had before the entry of the interlocutory decree, or their due authorization by the principles of equity, the final decree of the Court below should be affirmed.

THE INTERLOCUTORY DECREE WAS RIGHT.

I.

Although the Findings of Fact made by the Court be not disturbed, and be held by this Court to be justified by the testimony in the case, the decree of the Court is nevertheless correct and should, in all respects, be affirmed.

The Court framed its interlocutory decree largely upon the theory of the case of *Pewabic Mining Company*, 133 U. S., 50. In this connection the learned Court below said:

"The instant case in principle resembles *Mason against Pewabic Mining Company*, 133 U. S. 50. The difference between them is also of degree only. For a proposed sale of all property of a corporation in process of dissolution by the majority to a new corporation, by them organized and for its stock to be distributed to the former's stockholders, is substantially like an executed-like sale for like consideration and purposes by a majority of a corporation contemplating dissolution to another corporation in which they are interested, so far as the rights of minority stockholders are concerned.

"The rule of the *Pewabic* case is that any stockholder can insist that any sale of all corporate property upon dissolution shall be to the highest bidder for cash, and not to a corporation in which the majority are interested and for its stock at prices fixed by them.

"In the matter of relief to be granted, it

appears plaintiffs own 12,560 shares of Alice of 400,000 shares outstanding. At the time of sale Butte Coalition owned about 234,000 said shares. The sale was ratified by 289,590 shares, and opposed by 5,500. * * * In any event, at least 34,000 shares of Alice are owned by others than the parties hereto and Amalgamated. A court of equity will model relief so that all parties in interest, whether before the court or not, will be protected. As before stated, the majority could lawfully sell Alice. The minority's right was a fair sale for money to the end that each thereof received in money the value of his equity in Alice property. Their present right is to sufficient relief to still accomplish that end.

"The sale is not to be unconditionally set aside, however, for unless the property can be sold for more the interest of all the parties hereto and of those stockholders who neither appeared nor complained, require it shall not be disturbed. The method of the Pewabic case will be followed as near as may be. The value of the Anaconda stock paid for Alice was \$1,500,000. Some \$300,000 dividends thereon have since been paid. What was the amount of debts and obligations of Alice assumed by Anaconda does not appear. The decree will provide that a re-sale will be made and provided when made if no bid greater than the total proceeds to Alice as above be made, and provided thereupon defendants pay to plaintiffs and all those entitled thereto the money value of their equity in the proceeds of the sale heretofore made; that is, their proportionate share of the market value of the Anaconda stock at the time of the sale and of the dividends thereon, no re-sale will be made and the sale involved will be undisturbed. Thereby defendants will gain no advantage, plaintiffs will suffer no loss, and all Alice stockholders will receive their just dues" (Tr., Vol. I, pp. 187, 188, 189).

The Court of Appeals, in its decision affirming the correctness of the procedure provided for in the interlocutory decree of the court below (Tr., Vol. II, p. 989) said:

"It cannot be denied that the majority of the stockholders of the Alice Company had the right to sell the corporate property. After the sale, and at a meeting regularly called and held under the authority of the laws of Utah, the requisite number of the stockholders passed a resolution directing that the corporation be dissolved, its affairs wound up, and its assets distributed. The appellants had no power to prevent dissolution against the will of the majority. Nor had they the right to say that a sale should not be made to the Anaconda Company, if that Company outbid others. They had, however, the right, and that right the court below secured to them, to have the property sold free from the effect of any unfair combination between the majority stockholders and the Anaconda Company. The Court below followed the rule of *Mason v. Pewabic Mining Company*, 133 U. S. 50, which holds that any stockholder can require that upon dissolution the corporate property shall be sold to the highest bidder for cash, and not to another corporation in which the majority stockholders are interested, and on terms fixed by them. There is no essential difference in principle between that case and this, and no substantial difference in the facts. The only difference is that in the *Pewabic* case the minority stockholders were in court insisting on their right to a sale at public auction, while in the case at bar the minority assert that no sale whatever should be made. Upon the law and the facts they are in no position to prevent a sale, nor to thwart the purpose of the majority to sell to another corporation. When they subscribed to their stock, they assented to the laws of Utah governing the distribution of assets of corporations, and they

must abide by them. Nor is any relevant distinction to be found in the fact, as asserted, that in the Pewabic case the corporation had ceased to exist, while in the present case the corporation was still in existence. It is true that the charter of the Pewabic Mining Company had expired, but under the laws of Michigan it continued to be a body corporate, for all purposes except that of continuing in business, and among the permissible functions of its continued existence as prescribed by law was that of winding up its affairs, disposing of its property and dividing its capital stock. * * * The majority of the stockholders have rights which the court must recognize and protect. They have the right to retain the benefit of the sale already made unless a sale for a higher price can be made. This was the protection afforded the majority stockholders in the Pewabic case, and it is here afforded by the decree of the court below."

Both courts found, as a matter of both law and fact, that Alice stockholders had the right to sell Alice property. They further found, and it is undisputed, that at a meeting of said stockholders, properly noticed and held, it was voted to sell Alice property, and not only was it voted to sell the same, but a purchaser was found therefor and the terms of sale agreed upon. It was also found by the Court that the sale of the Alice property was authorized in pursuance of a plan touching the ultimate dissolution of the Alice Company. The only vice the Court found in the former sale to Anaconda was that there was doubt as to whether an adequate consideration had been obtained for the physical properties of the Alice, and that under the circumstances there should have been, if possible, a sale for cash. It was further held that upon final dissolution stockholders were entitled to receive their *pro*

rata share of the assets in cash, if they so elected, instead of being compelled to take their share of the property of the Company in kind.

It should also be borne in mind that not only had the Alice stockholders authorized the sale of Alice property, but they had gone further, under authority granted them by the laws of the state of Utah, and at a meeting regularly called and held the requisite number of the stockholders of the Alice Company had passed a resolution authorizing and requiring the dissolution of the Alice corporation, the winding up of its affairs, and the distribution of its assets. Proper proceedings for dissolution, under the laws of the state of Utah, were, according to the allegations of complainants' bill, and according to the testimony in this case, pending at the time they were thwarted by the suit of the complainants. The legality and regularity of these proceedings have not been, and cannot be, questioned.

This dissolution necessarily involved and carried with it the sale of all of Alice property, except where stockholders elected to take their *pro rata* share of the stock held by Alice in kind, and the distribution of the proceeds thereof to the stockholders.

It is true that the complainants, representing an almost negligible percentage of the stock of the Alice Company, opposed, as stated by Appellants in their brief, the sale of this property upon any conditions whatsoever; but while they might have a right to oppose a sale of it in the manner and under the circumstances attending the first sale to the Anaconda Company, they never have had at any time any standing in court to prevent the Alice Company, through proper corporate and stockholders' action, from selling said property free from the

alleged vice of unity of control and inadequacy of consideration, or to prevent a majority of its stockholders from selling the same to the Anaconda Company, provided there was no purchaser who would pay a larger price. Neither have they ever had any standing in court to prevent the dissolution of said corporation, regularly resolved upon by its stockholders, which dissolution necessarily carried with it a sale of all its properties and a distribution of its assets. The right of the majority of the stockholders of the Alice Company to sell all its property, and the right to sell the same to the Anaconda Company, under proper circumstances, it was the duty of the Court to maintain and respect in its decree, notwithstanding the objection of those dissenting, because this right was given to the majority stockholders by the laws of the state of Utah. Likewise it was the duty of the Court to respect, in its decree, the right of the majority of the stockholders of the Alice Company to dissolve the corporation and distribute its assets, and before the institution of this suit effectual steps had been taken to obtain these results.

The right to sell, and for adequate consideration to sell to the Anaconda Company, as well as the right to dissolve, were inviolable rights vested in the Alice Company, to be exercised through a majority of its stockholders, which it was the duty of the court to protect in its decree. The rights of the majority were, and are, equally as sacred as the rights of the minority. For the Court to have unconditionally set aside the sale would have denied these rights to the majority of the stockholders of the Alice Company. It would have required the Alice Company to undo what it had already legally done in pursuance of these lawful purposes. It

would have left undetermined and unenforced the rights of either. Before the majority could have made further progress in the accomplishment of these legitimate purposes, they would have to do over again the things already done, and once more submit to the Court the question as to in what manner these indubitable rights of the majority of the stockholders of the Alice Company to sell and dissolve might be carried out. A result wholly inconsonant with the rules of equity or the jurisdiction of its courts.

The minority stockholders therefore had no right to prevent the sale of all its properties by a majority of its stockholders, nor to prevent their selling the same to the Anaconda Company, provided a better price could not be obtained from others. Neither had the minority any right to prevent the majority of the stockholders from dissolving the Alice Company and distributing its assets. The only right vested in the minority was to have the property offered for sale and sold free from any unfair bargaining on account of unity of control between the Alice and Anaconda companies, and to have their portion of the assets of the Alice Company converted into cash and distributed to them.

Complainants make an ineffectual effort to distinguish the Pewabic case from the instant case, but unquestionably the principles of law controlling the two cases are identical. The Pewabic Mining Company was organized on the 4th day of April, 1853. By the laws of the State of Michigan the life of the corporation was thirty years, thereby its charter expired on the 4th day of April, 1883; but although its charter expired upon said date, it was provided by the laws of the State of Michigan "that all corporations whose charters shall expire by

their limitation * * * shall nevertheless continue to be bodies corporate for the term of three years after the time they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, dispose of and convey their property, and divide their capital stock, but not for the purpose of continuing the business for which such corporations have been or may be established". The corporation continued its business until the 26th day of March, 1884, but this is not material here. On the 26th day of March, 1884, within the period of time granted by the statutes of the state of Michigan within which said corporation could wind up its business, a resolution was passed by more than two-thirds of the stockholders of said Company, providing for the sale of its physical properties to another corporation for the sum of Fifty Thousand Dollars and the taking of stock in payment thereof, such stock to be distributed among the stockholders of the Pewabic Company; such of its stockholders as might refuse to take the stock of the new corporation, to receive their *pro rata* share of the consideration in money.

When it is remembered that in the case of the Alice Company a majority of the stockholders had sold its physical properties, under authority granted them by the common law, their charter and the statute of Utah, to the Anaconda Company for the stock of that corporation; and when it is remembered that exercising their indubitable right, under the laws of the State of Utah, proper proceedings had been taken by more than two-thirds of the stockholders of the Alice Company to dissolve the same, wind up the affairs and distribute

its assets, the analogy between the two cases becomes instantly apparent, and that they are ruled by identical principles cannot be controverted. Both Pewabic and Alice were legally undergoing a process of dissolution.

The distinction attempted to be drawn by Counsel, that because in the Pewabic case a minority of the stockholders were insisting upon a sale at public vendue, and in this case a minority of the stockholders were insisting that no sale whatever shall be made of the Alice properties, is altogether unfounded, for the reason, among others, that the court below correctly found that the majority of the stockholders of the Alice Company had the right to sell, and had sold, the physical properties of that Company; and for the reason that it clearly appears, as hereinbefore stated, that more than two-thirds of the stockholders of the Alice Company had voted to dissolve that Company, such dissolution carrying with it the sale of the properties of the Company and the distribution of its assets, and their legal right to so dissolve the Company is admitted.

An unfounded contention, therefore, of the minority stockholders does not in the least alter the principles governing this case, as those principles are laid down in the Pewabic case; and while the minority stockholders in the Pewabic case were insisting on a sale at public vendue, which was their right, the majority stockholders of the Pewabic Company were insisting that no such sale should be made. Here the majority stockholders are insisting upon a sale of the property, which is their right, and the minority object, without right, to such sale. Courts will protect equally the legal rights of stockholders, whether they represent a majority or a minority.

While the Court cited the *Pewabic* case as authority for its interlocutory decree, it is not necessary that there should be a complete analogy between that case and this for the decree to be sustained. The *Pewabic* case might be laid aside altogether, and yet the decree is firmly grounded upon well-recognized equitable principles. These principles are given full force and effect in the *Pewabic* case, and have likewise been given full force and effect in other cases.

Alice minority stockholders objecting to the sale to the *Anaconda Company*, submitted their rights, as well as the rights of the majority stockholders, to the determination of a court of equity, invoking its judgment thereon, and the Court would have been derelict in its duty if it had not so framed its decree that it would be effectual to protect the rights of both. In 16 Cyc. 478, it is said:

"Equitable relief may be adapted to the circumstances of the case. There is no limit to the variety of decrees in this regard. While certain equitable remedies are called for with sufficient frequency to create definite rules for framing the decrees in such cases, in order to accord the appropriate relief, these categorical remedies do not limit the scope of decrees. While equity will not do that which is only a hardship to defendant, and of no benefit to plaintiff, still where plaintiff clearly establishes his right, the court must award the appropriate relief without considering inconvenience to defendant. It is of course impossible to specify what relief may be awarded outside of the well-defined and common equitable remedies, but it may be said in general that the court will adjust the relief in such a way as to afford fair protection to the rights of all parties."

In *Wheeler et al. v. Abilene Nat. Bank Bldg. Co.*, 159 Fed. 391, the principle contended for in this case was applied. In that case the whole of the property of the Abilene National Bank Building Company was sold by the directors of the Company to one Southworth, who was the President and director, and the owner of a large majority of the shares of the corporation. The other directors of the Company were "dummy" directors, holding one share each, which had been supplied them by Southworth to qualify them to act as directors. The corporation owed Southworth, but its property was of greater value than the amount of the debts. At a meeting of the stockholders, the requisite number of shares, including those owned by Southworth, were voted to confirm the sale. Upon suit for rescission by a minority stockholder it appeared that the property could have been sold for a substantially larger amount. That some four months prior thereto the minority stockholder had offered to pay more, and that he had asked, but had not been given, an opportunity to bid upon the property. The Court, speaking through Sanborn, all concurring, held the sale voidable, but not void, and only conditionally rescinded the same as follows (p. 395) :

"The sale, however, is voidable, not void, and the court below may require a complainant who seeks equity to do equity. The decree below is accordingly reversed, and the case is remanded to the Circuit Court, with directions to enter an interlocutory decree to the effect that the sale to Southworth be avoided, and the property be sold by a master, on condition that, within 60 days after the entry of the interlocutory decree, the complainants, or one of them, offers to pay for the property and

deposits with the clerk of the court \$3,000, to be applied in payment for the property at the master's sale in case no one offers more, and in case the depositor proves to be the highest bidder, otherwise to be returned to him, and in case such a deposit is made to enter a decree for the sale of the property by a master, for a proper accounting, and for such other relief as may be proper, and in case no such deposit is made to enter a decree of dismissal of the bill for failure to comply with the condition specified; and it is so ordered."

The case of *Koehler v. St. Mary's Brewing Co. et al.*, 77 Atl. 1016 (Pennsylvania), is likewise in point. In that case the board of directors and a majority of the stockholders agreed to sell all of the property of the corporation to another corporation, and agreed to take in payment therefor bonds of the purchasing corporation, falling due thirty years from their date. On a suit brought by dissenting stockholders to enjoin the execution of the sale the Court held such a sale to be illegal, for in that the same was not substantially made for cash. It was not until the reargument of the case in the Supreme Court that the defendant, while still insisting that the minority stockholders should be compelled to take the bonds of the purchasing company, offered to pay to them their *pro rata* share in cash. The court compelled the minority stockholders to accept this offer or suffer the dismissal of their bill. On page 1019 it said:

"On the reargument of this appeal counsel for appellees stated that, while they still insisted that the appellants should be compelled to take the bonds of the Elk County Brewing Company, they were willing to have the decree dismissing the bill affirmed upon condition that the appellants be paid cash for their pro-

portionate shares of the purchase price. This was very prudent, and the decree is affirmed, upon condition that the appellees pay, or cause to be paid, to the appellants, within 60 days, cash for their respective interests in the purchase price of \$250,000, for the sale and transfer to the Elk County Brewing Company of the franchises and corporate property of the St. Mary's Brewing Company, the costs below and on this appeal to be paid by the appellees."

In *Bowditch v. Jackson Company*, 82 Atl. 1014, 1018, the Supreme Court of New Hampshire said:

"The claim is also made that a purchase by the Jackson Company of Nashua Company stock is *ultra vires* and voidable. But the substance of this transaction is not a purchase of stock by the Jackson Company. That Company is to be dissolved, and in the process of dissolution the proceeds of its property are to be divided among its shareholders. The Nashua Company pays \$585,000 for the property. Those who desire to receive payment in stock can do so, and cash will be paid to those who do not wish to invest in the stock. So far as the Jackson Company takes the stock at all, it is merely to transfer it to those who elect to take it, or to sell it for the guaranteed price and pay the proceeds to those who wish to receive money instead of stock. If the form of the agreements and offers, taken as a whole, infringes the rule here invoked, the substance is not open to such objection. In such a case equity ought not to interfere."

There is no pertinency in the objections urged in appellant's brief to the decree of the court ordering a sale of this property at public vendue. If it was the duty of the Court to offer the property for sale, in what other manner should it have sold the same. Having the right to offer the property for sale, in

order to protect the rights of all the stockholders, and particularly the rights of the majority to dissolve the Alice and to dispose of all its physical properties, the Court was bound to offer the property in a manner consonant with like proceedings in courts of equity. That there is no other known method by which the property could be disposed of is clearly apparent from the many authorities cited in the *Pewabic* case; and complainants having submitted their rights to the Court cannot interpose any objection to the method of sale, so long as such method is consonant with the proceedings of courts of equity. And the fact, if such be a fact, that at such a sale the property might not bring as much as it might under some other method, furnishes them no reason for complaint.

The Court could not direct the complainants in this case to undertake a private sale of the property. This would have deprived the corporation and the majority stockholders of its and their rights in the premises; besides it would have availed nothing. Since the year 1910, up to the final decision of this suit, the minority stockholders of the Alice had full opportunity to produce a purchaser for this property, who would give more than had been given for it by the Anaconda Company. The Court could not have directed the Alice Company, through its officers and a majority of its stockholders, to secure a purchaser for this property other than the Anaconda Company. Courts do not commit the execution of their judgments and the carrying out of their decrees to the tender mercies of either of the parties to a litigation of this character; but they commit the sale of property, when such must be made, to an impartial officer, and direct a public

sale, upon due notice, as the method best calculated to obtain the best price.

It is further stated that complainants were unable to bid themselves for this property; that they had not the means to enter the competition. This statement, of course, finds no basis of fact in the record. Whatever evidence there is touching this point shows that the Walkers, and the interests controlled by them, were wealthy and powerful interests, amply able to bid upon this property if they had considered it a desirable purchase. In addition thereto, from 1910 until the date of the sale, the complainants had every opportunity to procure a purchaser for this property and have him standing ready to buy the same when it should be offered for sale, if such a purchaser could be found. But all this is of no consequence. The stockholders of the Alice having the right to sell this property, and the right to dissolve the Alice Company, were not compelled by any known rule of either law or equity to refrain from doing so, neither was the court compelled to refrain from doing so, until the complainants should become financially able to purchase the same or sufficiently active and influential in the financial world to secure some one who would purchase it.

It is also said that no one could be found at this time who would bid more than a million and a half dollars for this property; that the Anaconda Company was in a more advantageous position to develop this property and make it profitable than any other company; that it could afford to pay more than any other person.

When seeking to set aside the sale to Anaconda, according to complainants, the consideration is totally inadequate; when seeking to prevent a sale

at all, under the order of the Court, the consideration is sufficiently large to prevent any competitors from bidding upon the property. These different viewpoints of counsel, taken to meet the exigencies of each situation, are certainly quite antagonistic to each other.

But upon what known rule of either law or equity can it be contended that the conceded right of the Alice Company and its stockholders to dissolve the corporation, to sell and dispose of its physical properties, and to sell to Anaconda under certain circumstances, and the duty of the Court to protect these rights in its decree, shall be made subservient to the matters contained in these suggestions. Likewise, the Alice Company could not be compelled to hold its physical properties indefinitely because a timid investor might apprehend an appeal to the Supreme Court of the United States upon the suit then pending, or because the Anaconda Company desired control of this property, and was big enough financially to secure the same, or because other purchasers might consider themselves unwelcome in the Butte Camp, or because of any of the reasons assigned in appellants' brief.

The right to sell and to sell to Anaconda, and the right to dissolve the Company and the right to distribute its assets were rights granted by the State of Utah, and vindicated in the opinion of the learned courts below, and these rights could not be made to abide a change in conditions which assured to the minority stockholders that a greater sum than that paid by the Anaconda Copper Mining Company could be secured for the physical properties of the Alice Company. If such were the case, any minority stockholder of the Alice Company could forever prevent the Alice Company from being dis-

solved or from disposing of its property, for not even the complaining stockholders can look forward with any assurance to a definite time when they would be able to bid for this property or willing to do so, or successful in obtaining a purchaser therefor willing to bid more than that which was bid by the Anaconda Company, or when the situation of the Anaconda Company in relation to the Alice property would not be relatively the same as it was at the date of the purchase, or when the Anaconda Company would not have a perfect right to raise the bid of any bidder therefor, or when some dissenting stockholder might not institute litigation touching the sale of the property which might terminate in an appeal to the Supreme Court, or when it might not be unjustly charged, without any basis in the testimony, that any new-comer in the Butte camp would be regarded as an interloper.

We respectfully submit that the decree was in all respects correct; that it protected every right which the law gave to the complainants. It gave them every opportunity to either purchase or secure a purchaser, at an advanced price, for the Alice properties. It provides a means by which they were entitled to have the assets of the Alice Company distributed to them in cash instead of in stock of another company; and it also protected the rights of the majority of the Alice stockholders to sell all the property of the Alice Company, and to dissolve the corporation and to wind up its affairs. All the minority stockholders could possibly ask for was a full and fair opportunity to find a purchaser for Alice properties who would pay more than Anaconda. This full and fair opportunity was given to them. They absolutely failed. No purchaser could be found. For the Court, under

these circumstances, to have unconditionally set aside the sale of the property to Anaconda, and to have forbidden the majority of the Alice stockholders to sell the property to Anaconda, would have been to indefinitely suspend the authority which the majority of Alice had to dispose of the property, and would have been a gross wrong to the Alice Company, and the majority stockholders thereof, and would have been saying in effect that the rights of the Alice Company and the majority of its stockholders should be forever subservient to the claimed rights of the minority to control and regulate its affairs.

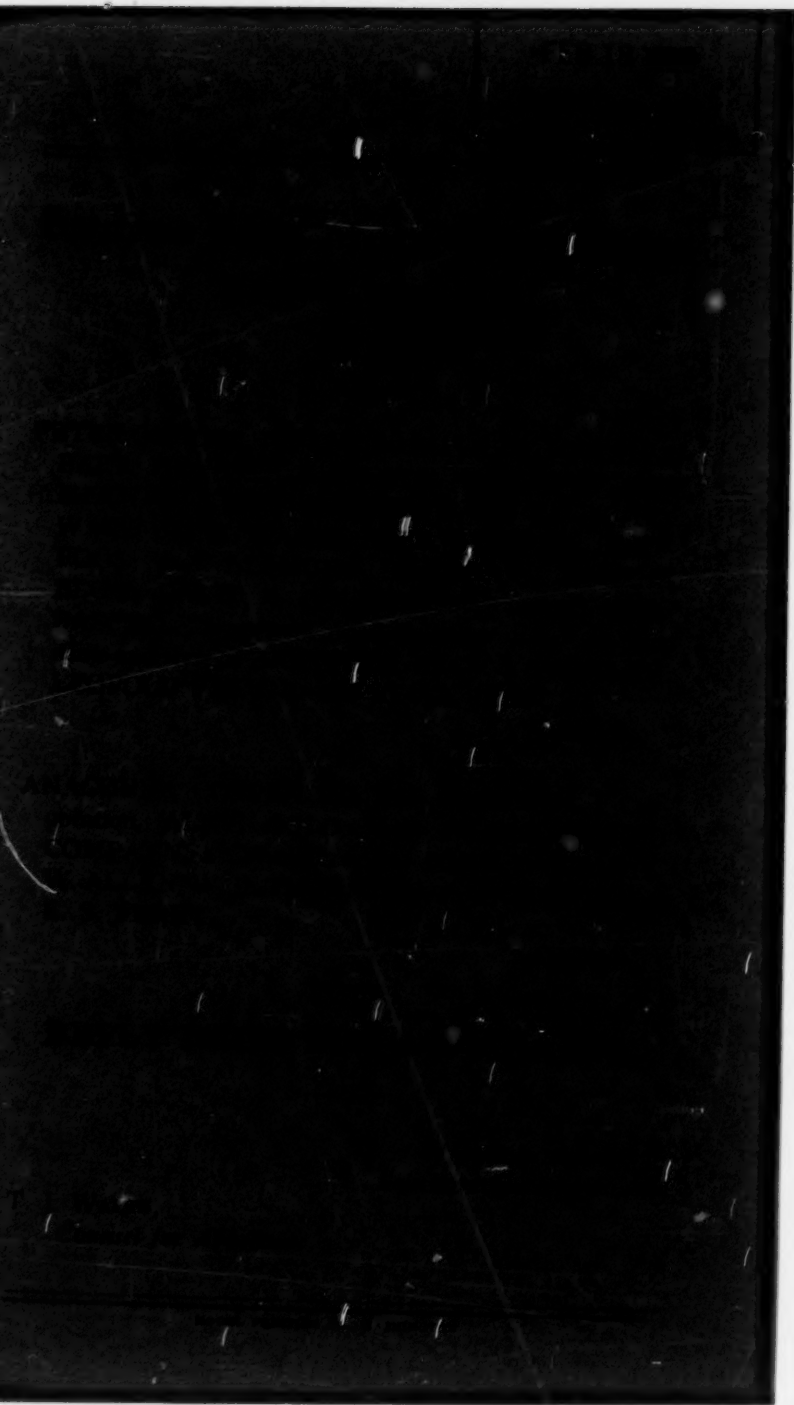
The decree is expressly authorized not only by the general principles of equity, but by the decision in the Pewabic case, and ought, in all respects, to be affirmed.

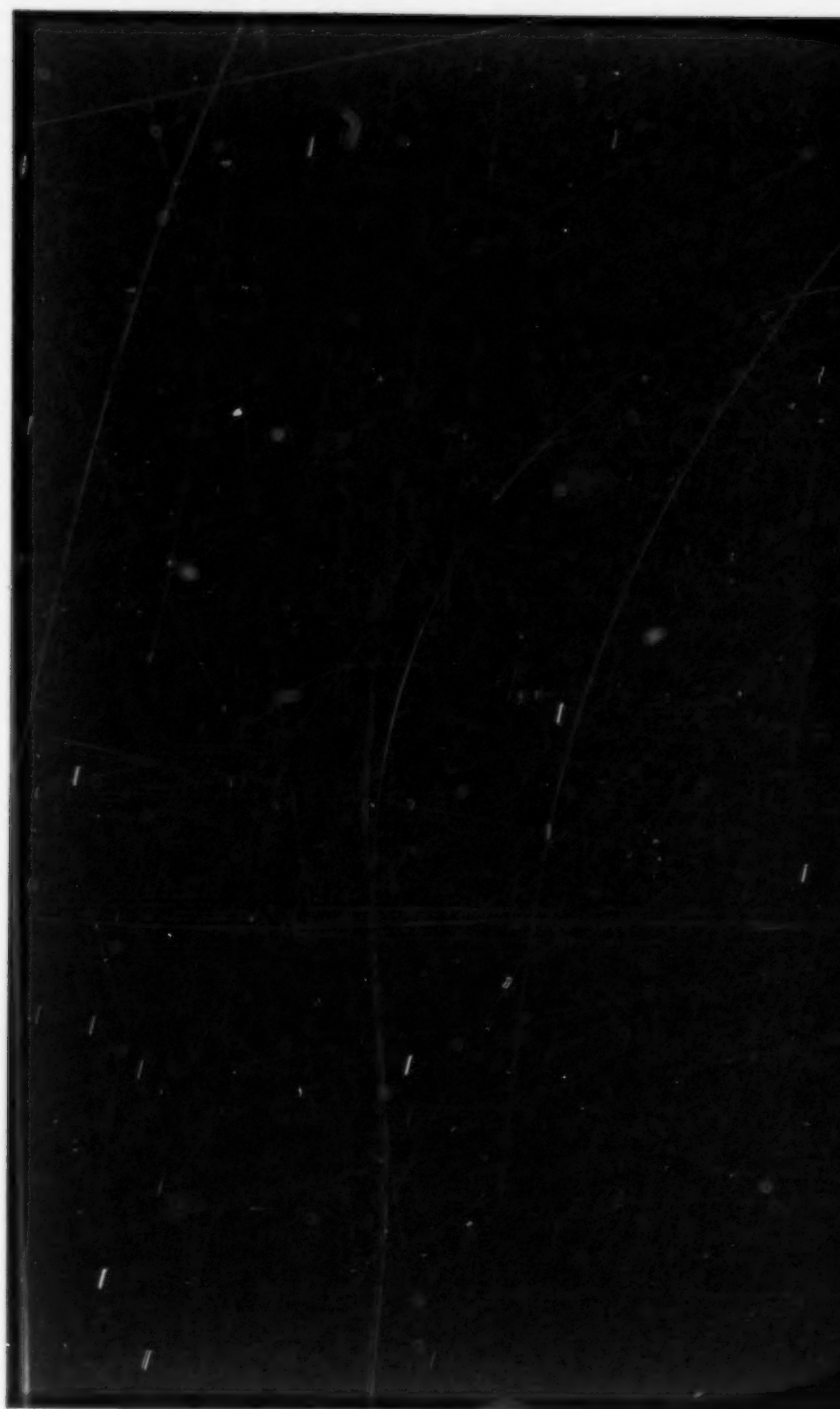
Respectfully submitted,

L. O. EVANS,

W. B. RODGERS,

Residing at Butte, Montana, Solicitors for
Appellees.





SUBJECT INDEX.

	PAGE
I. Just Compensation Denied by the Decree....	2
II. Inaccuracies in Appellees' Brief.....	3
III. <i>Mason v. Pewabic Mining Company</i>	10
IV. Corporations Authorized to "Deal In" Prop- erty	14
V. Is the Equitable Remedy of Cancellation Available?	15
VI. <i>Wilder Mfg. Co. v. Corn Products Rfg. Co.</i> , 236 U. S., 165	17

CASES CITED.

<i>Bowditch v. Jackson Co.</i> , 82 Atl., 1014.....	12
Brice on <i>Ultra Vires</i> (3d Ed.), 696.....	17
<i>Foster v. Commonwealth</i> , 8 Watts & S., 77, 79...	19
<i>Garvey v. St. Joe Mng. Co.</i> , 91 Pac., 369.....	15
<i>Koehler v. St. Mary's Brewing Co.</i> , 77 Atl., 1016..	11
<i>Kohl v. Lelienthal</i> , 81 Cal., 378; 6 L. R. A., 520..	12
II Lindley on Mines, 642-643 (3d Ed.).....	4
<i>MacGinniss v. Boston & Montana Mng. Co.</i> , 29 Mont., 428	8
<i>Morris v. Elyton Land Co.</i> , 28 So., 513-516.....	17
<i>Wheeler v. Abeline Nat. Bank Bldg. Co.</i> , 159 Fed., 391	11



Supreme Court of the United States

OCTOBER TERM, 1919

No. 36

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, MARGARET ANN MEEHAN, EUGENE BLUM, ISAAC BLUM, EDWARD BLUM, ISADOR BAER, ALPHONS DREYFOOS; and ALPHONS DREYFOOS, EUGENE BLUM, DAVID C. GOLDENBERG and EUGENE BASCHO, Co-partners doing business under the firm name and style of DREYFOOS, BLUM & COMPANY; LEOPOLD FREUND and ALICE FREY,

Appellants,

v.

ANACONDA COPPER MINING COMPANY, a Corporation, ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and JOHN D. RYAN, J. W. ALLEN, W. D. THORNTON, A. C. CARSON, and E. S. FERRY,

Appellees.

REPLY BRIEF FOR APPELLANTS

WALSH & NOLAN,
Solicitors for Appellants.

T. J. WALSH,
Counsel for Appellants.

The appellants submit herewith some fragmentary comments suggested by the brief filed and the argument made on behalf of the appellees herein.

I. JUST COMPENSATION DENIED BY THE DECREE.

In the introductory part of the original brief of appellants (p. 7) reference is made to some incongruities between the decree made in the District Court and affirmed in the Circuit Court of Appeals, and the opinions of those courts respectively upon which the ultimate conclusion of each was based. The attention of this court is directed to another even more glaring.

Both of the lower courts held that the price paid by the Anaconda for the Alice properties was inadequate. But notwithstanding that finding, the sale was affirmed, though the right was accorded to any of the appellants, at their election, to surrender their Alice stock and take respectively in lieu thereof such proportion of \$1,500,000 found to be the value of the 30,000 shares of Anaconda stock, as the number of shares held by the electing appellants bears to the total number of Alice shares—400,000. In other words, they might retain their Alice stock, enjoying their proportionate interest in the 30,000 shares of Anaconda stock found to be of less value than the property exchanged for it, or they might have the same proportionate share of \$1,500,000, found to be less than the fair value of the property in which they were interested as stockholders, and which was by the sale and the decree passed to the Anaconda.

Let it be borne in mind that the dissenting stockholders are not to have the fair value, the cash equivalent of the property, of which the Alice was by the sale and the decree divested. The decree is explicit on this point.

Record, Vol. I, pages 140-151.

That is, the interlocutory decree is explicit. By the final decree the sale is affirmed absolutely and without qualification or condition (Record, Vol. I, pages 152-155).

Whether that decree is to be construed in the light of the opinion of the court and the interlocutory decree as carrying the right of election, or whether it must be held that the right was, on further consideration by the court, withdrawn, is a matter of interesting speculation. In either case the appellants are required to surrender their interest in the Alice property upon a consideration adjudicated to be inadequate.

That obviously unjust decree this court is asked by appellees to approve and affirm.

II. INACCURACIES IN APPELLEES' BRIEF.

The zeal of counsel has led to not a few statements, more or less important, in the brief of the appellees, the accuracy of which is challenged. Attention is invited to some of the more conspicuous of these.

1. The Alice property was not operated successfully for a number of years prior to the sale under consideration. The company had paid no dividends since 1898. The lower workings had long been under water, which had been allowed to rise to the 700-foot level. The hoist had been destroyed by fire, but a new one had been erected, and more recently the mill, which does not appear to have been used in modern times except in connection with some experimental work on the zinc ores, was burnt down. The only ore extracted was taken from the old workings above the water level by leasers or "tributers."

Reviewing the condition of the property in an effort to leave on the mind of the reader the impression of a hopeless ruin, that a sale might be justified, the brief, at page 86, asserts that "for many years the property had been practically abandoned."

This assertion is wholly unjustifiable. Abandonment implies a surrender of possession with no intention of re-

asserting it and regardless of what becomes of the property.

II Lindley on Mines, 642-645 (2d Ed.).

Not only was possession held without interruption by the company through its tributers, numbering from eight to thirty during the period immediately prior to the sale, but the company maintained an office on the Alice mill site adjoining the Alice claim, under a superintendent, and kept two watchmen regularly employed to guard the property.

Record, Vol. I, pages 371-372.

With like purpose the court is advised, at page 9 of the brief, that the leasing operations resulted in a loss to the company in the year 1902 of \$20,320.00. But that figure represents only the difference between the income and the total outlay of that year, including the cost of a new hoist, \$19,575.23 (Appellants' Brief, page 13). The fact is that the net loss (on operations) for the eight years from 1898 to 1906 amounted approximately to but \$8,000, making allowance for the cost of the new hoist, while the indebtedness of the company was swelled during the three years and nine months of the Butte Coalition control from \$27,784.75 to \$34,101.56 (Record, Vol. I, page 447) about \$1,700 a year, which, had the apparently needless Eastern office, entailing an expense of \$1,901.61 (Record, Vol. I, page 449), been dispensed with, would have been reduced to less than \$1,200. With a property worth confessedly more than a million and a quarter, the company was not going into bankruptcy very fast. Meanwhile, development was proceeding in adjacent properties, the copper-producing area was being extended and the metallurgists of the world were struggling with the problem of the economic reduction of refractory zinc ores, with marked success in the

case of those of the neighboring properties of the Butte Superior, and the Butte Coalition was carrying the indebtedness without a murmur, as the Walker Brothers had sustained the burden when they owned the controlling interest.

In the same connection (page 9) the court is informed that the mill and hoist on the Alice property had burned down. That is quite true, but only half the truth—at least not more than three-quarters. A new hoist had been erected, in place of the old one, the cost thereof making up, as stated, two-thirds of the indebtedness of the company under the old management. The mill had burned down. It had not been used by the company for some years—doubtless had become obsolete. It was fitted up for and was employed at the time of the fire by a company which was making an attempt to treat the zinc ores (Record, Vol. II, page 952). As it went out of business on the occurrence of the fire, it would not be an unreasonable inference that financial troubles may have had something to do with the termination of the experimentation.

Some reliance is placed upon the failure of the effort in which the mill was being used at the time of its destruction in support of the contention or view that the Alice zinc ores are hopelessly refractory.

The company making the attempt had been promoted by a Rabbi, and its operations were directed by a gentleman who had had no experience in work of that character. Their efforts were never regarded seriously in Butte (Record, Vol. II, page 894).

In the same paragraph of the brief to which reference was last made, the property for which the Anaconda Company paid the equivalent of a million and a half is characterized as "this worked-out and dilapidated mining property."

As to its being "worked out." It will be remembered that tributers were engaged in extracting ore from above the 700-foot level even down to the time of the sale under investigation, ore that under the relatively crude methods of the earlier days had been left behind in the old stopes. The royalties paid by them while the Butte Coalition controlled the property amounted to \$16,347.52 (Record, Vol. I, page 446).

Moreover, large bodies of zinc ores were open to view above the water level, and others were known to have been left behind in the lower workings. Not only was there, when they were exposed, no known process of treating them successfully, but the presence of the zinc made more difficult and expensive the extraction of the silver which they carried.

Besides, it does not appear by any testimony that the Rainbow lode had become barren in the depths. The cessation of operations by the company on any large scale occurred contemporaneously with the slump in silver in the early nineties. Whatever might be said of the property, it could not be truly characterized as "worked out." neither could it be fairly spoken of as dilapidated. The only surface structures of which the evidence tells is the office, the condition of which is not disclosed, the hoist which was new and the mill which had been burned down. It is disclosed that some, perhaps many, of the stopes above the 700-foot level had caved, a vicissitude to which all mine workings above the water table are subject. But if the upper workings were not generally in good condition, it would have been impossible for the tributers to continue their operations, which were so extensive as to justify the expenditure of nearly \$20,000 in the construction of the new hoist for their use. The record is entirely silent as to the workings below the 700, and the court will perhaps

take judicial notice that as they were constantly under water they were in a state of excellent preservation.

2. Though the Butte Superior's efforts to work profitably the zinc ores found in that part of the Rainbow lode had, no doubt, been attended with more marked success than that which resulted from the more or less crude experimental work conducted on the Alice ores, perhaps because the intelligence and persistence brought to the task were equally disproportionate, it had experimented for six years before a known process was developed, that is to say, adapted to the particular ores to be treated, by its superintendent, Mr. Bruce, through which its operations, in a concentrator specially contrived, produced satisfactory returns (Record, Vol. II, page 872).

The appellees' brief asserts that "The record shows that Bruce was unable to devise a method successfully to treat the Alice ores" (page 87). No reference is given in connection with this statement, and a thorough search of the record will reveal no such evidence. Mr. Bruce never tried to work out a process for the treatment of the Alice ores.

3. Attempting to justify the disposition of the property of the Alice for Anaconda stock, though it is confessed that neither under the statute nor its articles the first-mentioned company had any express power to take or hold stock of another corporation, the claim is advanced that the transaction was but a step in the proceedings for the dissolution of the Alice and the transmutation of its assets into cash for distribution among its stockholders. The contention is anticipated, and the views of appellants, in the light of the facts, set out in their brief, page 73 to page 83.

At page 184 of the appellees' brief is the statement, "It was also found by the court that the sale of the Alice property was authorized in pursuance of a plan touching the ultimate dissolution of the Alice Company." No reference to the record accompanies this statement, and the con-

text does not serve to identify the court referred to. That is immaterial, however, because no court so held. The District Court held directly to the contrary. The comment of Judge Bourquin on that feature of the case is quoted in appellants' brief at page 83, from the opinion filed by him, in which he asserts that the facts relied on "did not deprive the taking of the stock of the quality of a permanent investment."

The point was expressly reserved by the Circuit Court of Appeals (Record, Vol. II, page 1000), properly enough, if the decree was to be reversed on other grounds, as advised by Judge Ross, but indefensibly so when it was to be affirmed as determined by the majority of the court.

Judge Bourquin but concurred with the view earlier expressed by Judge Hunt in awarding an injunction *pendente lite*. That able jurist said on the question before us:

"I do not think the evidence justifies a conclusion that at the time that the circular letter of April 27, 1910, to the stockholders of the Alice Company, was issued, the object in view was to dissolve the Alice Company, inasmuch as the circular letter itself not only is wholly silent concerning dissolution, but expressly states the purpose of the meeting to be to submit to the consideration of the stockholders and to have them pass upon the proposed contract of sale between the Alice Company and the Anaconda Company, which proposition, if approved, would result in the sale and transfer of all of the property and securities of the Alice Company to the Anaconda Company, in consideration of the issuance and payment by the Anaconda Company of thirty thousand shares of its capital stock."

4. At page 145 of the appellees' brief reference is made to the case of

MacGinniss *v.* Boston & Montana, 29 Mont., 428, in which the court had under consideration an anti-trust

statute of the State of Montana, the nature of which is discussed in appellants' brief, page 106; and on page 146 of appellees' brief is set out what purports to be the propositions therein determined, among others:

"(a) * * * That a private individual could not undertake to enforce such laws by a suit in equity; that this was the duty devolving upon the State."

The holding of the court is directly to the contrary; that is, it held that a stockholder of a corporation absorbed, or about to be absorbed, contrary to the statute, may maintain an appropriate suit for relief in equity.

5. In an effort to justify the consolidation of 1910, which included the acquisition of the Alice properties, the brief states, at page 161, that "It clearly appears from the evidence in this case, as hereinbefore pointed out, that the economies brought about by the acquisition of the properties acquired by the Anaconda Company were absolutely essential to enable these companies to continue to be successful competitors, with a reasonable profit, against the copper producers of the United States," and more to the same effect.

The evidence "hereinbefore pointed out" is quoted at pages 39 and 40 of the brief, where appears a part of the testimony of C. F. Kelley. At page 39 the witness, as quoted from the record, says that "a *part* of the mining companies operating in Butte had reached the point where they could no longer produce their ores at a profit," which condition, he asserts, was due to "the necessity of operating separate, independent organizations, running separate plants, etc."

Note that the witness says a *part* of the companies *operating in Butte* had reached that point. If two of the nine or ten companies going into the combination were in that condition, the statement would be true—the Alice and the Washoe, for instance. But the statement is not confined to

the companies consolidated. It embraces all companies "operating in Butte," and would be true if two minor companies, not subsidiaries of the Amalgamated at all, were thus circumstanced. But on the next page of the brief (page 40) the statement is qualified and takes this form: "The result was that the overhead charges were eating up a *large part* of the profits, and, as I say, with some of the companies it was a rather close proposition, and a close proposition so far as certain territory was concerned."

It is putting it mildly to say that the testimony referred to—and there is no other—can not be stretched so as to justify the statement challenged.

It might be added that if any reliance was to be placed on the existence of such a condition as the brief asserts prevailed, it ought to be shown by the annual reports of the companies, which would disclose whether the receipts were falling off, whether the expenses were increasing and to what cause the reduced or disappearing balance was due.

If the facts were thus established, the question would then be presented whether under the law a number of competing companies may consolidate because in the case of *some*, but not *all*, of those absorbed, it was found impossible longer to operate at a profit.

If economy in management or operation affords a sufficient justification for a consolidation which would otherwise be violative of the Sherman law, it will be difficult to find a case to which the law is properly applicable. Whether one who engineers such a consolidation is a criminal or not depends on the true resolution of an economic question. The lawyer who is appealed to for counsel would relegate the inquiry to the engineering corps.

III. MASON v. PEWABIC MINING COMPANY.

At pages 191 to 193 of the appellees' brief reference is made to some cases said to apply the principle upon which

the judgment in *Mason v. Pewabic Mining Company* rests. One of these is

Wheeler v. Abeline Nat. Bank Bldg. Co., 159 Fed., 391.

A stockholder complained that corporate property was sold, for an insufficient price, to one who owned a majority of the shares of the corporation and was its president and one of its directors. The dissenting stockholder evidently *wanted the property sold*, for he, himself, testified that he had offered a higher price for it. He was not insisting that the property ought not to be sold at all, but that the price was not adequate. The decree ordered the sale annulled, conditioned that he deposit a bid for it for the amount he claimed he had offered.

Surrogate courts often order a re-sale upon complaint that an insufficient sum has been realized, conditioned that the complaining parties make a better bid.

Perhaps the order made in the case cited may be justified as an exercise of the authority of the chancellor in certain cases to make the award of relief conditional. Possibly such an order would be justifiable if both parties desired a sale and the complaining party was concerned only about getting full value for it. However, it will be noted that in the case being considered, as was the case in *Mason v. Pewabic Mining Company*, that part of the order relied upon was not the subject of review at all. It does not appear that the dissenting stockholder made the slightest objection to the condition imposed, or that the court was called upon to pass upon the question as to whether it had any right to impose it as a condition of vacating the sale.

Much the same situation is presented by the case of

Koehler v. St. Mary's Brewing Co., 77 Atl., 1016.

The majority stockholders of the St. Mary's Company sold all of its property to the Elk County Brewing Com-

pany for \$250,000 of the bonds of the latter company, presumably controlled by the same interests. The sale was held voidable by the dissenting stockholders of the St. Mary's Company, who were objecting to taking the bonds. Apparently no serious contention was made that the price was not adequate, the objection being that the bonds could not be imposed upon the stockholders not willing to accept them. The court upheld this reasonable contention, whereupon, on re-argument, the counsel for the parties responsible for the transaction offered to give the dissenters their proportionate share of \$250,000 in cash. The court ordered that should the amount be deposited within a time fixed to the credit of those protesting, the sale should stand affirmed as ordered by the lower court. It does not appear that this arrangement was not entirely satisfactory to the appellants, nor does it appear that the propriety of such an order or the authority of the court to make it was ever presented for its consideration.

A third case referred to in this connection is

Bowditch v. Jackson Co., 82 Atl., 1014.

The Jackson Company sold its assets to a company referred to as the Nashua Company, *as a part of the proceedings for the dissolution* of the former on the basis of one and one-half shares of the former for one of the latter, the two issues being quoted on the market apparently at \$650 and \$975, respectively. The court found that the price was equitable, that the officers acted in good faith and for the best interest of both companies alike controlled by them. Apparently some provision was made, the exact nature of which is not disclosed, whereby any stockholder could receive his share of the proceeds of the company's assets in money, if he did not care to take Nashua Company stock. This was held to obviate an objection that the

Jackson Company stockholders never agreed to embark in the Nashua Company's business.

The case is distinguishable from that now before the court in a number of particulars, but notably in this, that the court made no new contract for the disposition of the property of the Jackson Company. It simply approved the contract that had been made. As pointed out in the original brief, the court made an entirely new contract for the parties interested in the transaction under inquiry, namely, that the property of the Alice Company should be put up for sale at auction, and unless it brought thereat more than \$1,500,000, it should become the property of the Anaconda for 30,000 shares of its stock, the stockholders dissenting to have the right to their distributive share of \$1,500,000 in cash.

It does not appear from the report of the case being reviewed whether the Jackson Company was or was not authorized, under the law, to acquire stock of another company. Indeed, it would seem that it was not to acquire the stock of the Nashua Company, but that on the transfer of the property of the former to the latter it was to deliver of its stock to the shareholders of the former one and one-half shares for each share owned by them in the Jackson Company. Presumably the stock of each in the Jackson Company was to be surrendered up and canceled as a part of the dissolution proceedings.

That kind of a transfer is condemned by

Kohl v. Lelienthal, 81 Cal., 378; 6 L. R. A., 520.

That is not the only particular in which the case is out of harmony with the authorities generally. It announces, as the basic proposition upon which its conclusion rests, that a majority of the stockholders of a corporation may, at any time it seems to them wise, sell off all its assets and

put it out of business, a view of the law of corporations canvassed in the original brief.

The theory of the transaction above announced is that which is to be gathered from the somewhat meager and indefinite statement of facts. But another is advanced in the opinion as follows:

"The claim is also made that a purchase by the Jackson Company of Nashua Company stock is *ultra vires* and voidable. But the substance of this transaction is not a purchase of stock by the Jackson Company. That company is to be dissolved, and in the process of dissolution, the proceeds of its property are to be divided among its shareholders. The Nashua Company pays \$585,000 for the property. Those who desire to receive payment in stock can do so, and cash will be paid to those who do not wish to invest in the stock. So far as the Jackson Company takes the stock at all, it is merely to transfer it to those who elect to take it, or to sell it for the guaranteed price and pay the proceeds to those who wish to receive money instead of stock."

Of course if, in the process of dissolution, the property of the Jackson Company was actually sold for \$585,000 to be paid by the Nashua Company to the stockholders of the former respectively in proportion to their interests, the Nashua Company likewise agreeing to give to any stockholder so electing its shares at \$650 instead of cash, there perhaps was no substantial ground of objection to the transaction.

IV. CORPORATIONS AUTHORIZED TO "DEAL IN" PROPERTY.

At page 54 of the brief of appellees reference is made to certain cases said to justify the conclusion that any corporation may, a majority of its stockholders assenting, dis-

pose of all its property. In several of these, as pointed out in appellants' brief, pages 60 to 63, the corporation was authorized to "deal in" property of the kind disposed of or in property generally.

Attention is then called to the more recent Utah statute (Sec. 322, Comp. St. of Utah, 1907) broadening the powers of corporations and granting to mining corporation then existing power to "deal in" certain specific kinds of property. The appellants have attempted to show, and it is believed, have shown, that the language used in the act impliedly forbids the acquisition of corporate stock (Appellants' Brief, pages 66-67). But aside from that contention, the articles of incorporation of the Alice Company give it no authority to "deal in" property, and it can exercise no powers except those conferred thereby, however broad the statute may be, because of section 10 of Article XII of the Constitution of Utah, as follows:

"No corporation shall engage in any business other than that expressly authorized in its charter or articles of incorporation."

In this connection it might be said that the case of

Garvey v. St. Joe Mng. Co., 91 Pac., 369,

canvassed at some length in the original brief, is controlling here because it construes the reservation act of 1874 and the equivalent provision of the State constitution, under which the right is reserved to alter or amend the charters of corporations, holding that neither authorizes the legislature, by a change in the law, to change the contract into which the stockholders enter *inter sese*.

V. IS THE EQUITABLE REMEDY OF CANCELLATION AVAILABLE?

The contention that though the appellants might have had injunction to arrest the execution of the deeds evidenc-

ing the transfer they assail, they cannot have them annulled, was anticipated and commented on in the original brief.

Appellants' Brief, pages 113-115.

Unless the case presents some elements of estoppel, there can be no reason for denying either form of relief as the conditions require. This view is sustained by the following from a recognized authority:

"There is a well-known maxim, '*interest reipublicae ut sit finis litium*'; and there is a time when an *ultra vires* transaction is so thoroughly carried through that on every ground of justice and expediency, as between the immediate parties to it, the affair is over for all purposes. The difficulty consists in saying what is the exact meaning of the word 'completed.' When is a transaction 'completed' within the meaning of the proposition?

"As regards this country, it is certain that before an *ultra vires* transaction is so at an end something more is required than that it should be completed on one side only, and, indeed, something more than that it should be completed in the ordinary sense of the word on both sides. The authorities in the United States would appear to be more liberal on this point as on many others; but unquestionably in this country as long as a transaction remains in agreement only, however much it may be perfected on the one side, the other side is entitled to repudiate it on the ground of its being *ultra vires* of the corporation, subject, of course, to the liability of the side repudiating to account for any benefits that it may have received. Probably, too, even where a transaction has been carried through on both sides so that each has done all that it agreed to do, if no delay has occurred, and if nothing has taken place to alter the position of the parties, so that the transaction may be reopened without injustice to either side, and the parties replaced in their original position, then notwithstanding the com-

pletion in this sense of the transaction, it will be reopened on the terms of placing both sides in their original position."

Brice on *Ultra Vires* (3d Ed.), page 696.

The specific question was considered in

Morris v. Elyton Land Co., 28 So., 513-516,

which was a stockholders' action to annul a sale made of corporate property in violation of their rights.

The following extract from the opinion will disclose the position of the court:

"We think there can be no doubt of the proposition that a court of chancery can and will undo an act which is *ultra vires*, as well as prevent the same by injunction. There is an equity of rescission as well as of prevention. 2 *Spell Priv. Corp.*, sec. 615; *City of Chicago v. Cameron*, 120 Ill., 447, 11 N. E., 899; *Mayor, etc., v. Knoxville & O. R. Co.*, *supra*; *Byrne's Case*, 65 Conn., 336; 31 Atl., 833; 28 L. R. A., 304; *Land Co. v. Dowdell*, *supra*."

VI. WILDER MANUFACTURING CO. v. CORN PRODUCTS REFINING CO., 236 U. S., 165.

The appellees list the above-mentioned case first among a line of authorities which they cite in support of their contention that the appellants can not assert the invalidity of the transaction they attack, because it is forbidden by the Sherman law. Copious extracts are made from the opinion in the case referred to, in which is elaborated the maxim that when a new right and a new remedy are given, the latter is exclusive.

The original brief pointed out the inapplicability of the decision to the case before us, the attack being made therein, not on one of a series of transfers effecting the consoli-

dation assailed, but a contract made by the consolidation after it came into being in the pursuit of the business in which it was engaged. It was a plain case in which a defendant bought goods of the plaintiff, for the payment of which he attempted to escape by pleading that the corporation of which he bought had no legal existence because its organization was violative of the Sherman law. It is not difficult to distinguish between contracts through which the absorption of the business of commercial rivals is accomplished and purchases made by the consolidation after it has come into being of supplies in the ordinary conduct of business in which it is engaged. In other words, the contract considered in the Wilder Mfg. Co. case, as well as in *Connolly v. Union Sewer Pipe Co.*, was not one out of which the alleged unlawful combination arose or through which it was effected at all.

But a word may be added concerning the discussion in the opinion in the Wilder Mfg. Co. case of the principle to which reference has been made.

That principle is one to be borne in mind by the court in its attempt to arrive at a correct opinion as to the intention of Congress in the enactment of the statute under consideration. The problem before the court is to determine what Congress meant, and the rule of construction is merely an aid to the court in arriving at a proper solution thereof. Could Congress have intended that a stockholder in a corporation, the property of which its directors propose to put into a consolidation in violation of the law, should not have the right to apply to a court to restrain such an unlawful disposition of it, or to have the transaction annulled if it had actually been carried out? What considerations of public policy could have induced Congress to entertain such a purpose? One can readily understand how it might be urged that Congress did not intend that one who is not interested in the property involved, who suffers no detriment

other than that to which the public generally is subject, ought not to be permitted to question the transaction, and this court has repeatedly held that he can not. But why should Congress intend to supplant, only by implication, in the enactment of this statute, the wholesome rule of the law thus expressed by Judge Gibson in

Foster v. Commonwealth, 8 Watts. and S., 77, 79:

"It is written on the hornbook of the law that the public and a party particularly aggrieved may each have a distinct but concurrent remedy for an act which happens to be both a public and a private wrong."

Moreover, the overwhelming denunciation in the statute of the acts against which it was directed leads to the conclusion that Congress could not have intended to give those acts a qualified sanction, but must have intended that they should fall whenever, under established rules, their validity was questioned. What reason is there to believe that, denounced as they were, Congress intended one who was damaged in such a way as that he could satisfactorily establish the amount of his loss should recover threefold, but that in the multitude of cases in which equity would otherwise take jurisdiction for the very reason that the injury is irreparable and incapable of being compensated by money damages, impossible of proof in all probability, there should be no remedy? Congress must have appreciated that it would be all but impossible for a stockholder of a corporation to prove what or how much money damages he suffered by reason of the absorption of its property by a monopolizing combination. Few of them are brought into being without all manner of assurances to the stockholders of the constituent companies that they will profit by the arrangement proposed, and the history of these transactions discloses that they often do. Such assurances were given in the case at bar, and it is maintained in the brief that it was highly

advantageous to the Alice stockholders to exchange the property of that company for Anaconda stock. It could not have been in the mind of Congress, if one may so express the idea, to allow one to assail the transaction if he could show money damages, but to forbid him, if he could not, to arrest the consummation of the transaction through an appropriate suit, assuming him to be interested in the property involved so as to give him the requisite standing before a court of equity. Neither is it readily conceivable as to why Congress should require the stockholder to stand by until the wrong was accomplished and then permit him to recover threefold damages, forbidding him meanwhile to enjoin the proceeding so highly penalized. The word "forbidding" is used advisedly, for, unless a suit to restrain or correct the wrong is either expressly or impliedly forbidden by the statute, it is sanctioned by the ancient rule above quoted.

Respectfully submitted,

C. B. NOLAN,

T. J. WALSH,

Solicitors for Appellants.

T. J. WALSH,

Counsel for Appellants.

Vol. I

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900

No. 813 25

PETER GEORGE, JOSEPH R. WALKER, JOSEPH S. BAER
ET AL, APPELLANTS.

VS.

ANACOSTA COPPER MINING COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED JANUARY 16, 1911.

(25,237)

(26,287)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 820.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER
ET AL., APPELLANTS,

vs.

ANACONDA COPPER MINING COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

INDEX.

	Page
Caption	<i>a</i>
Names and addresses of counsel.....	1
Transcript of record from the district court of the United States for the district of Montana.....	1
Caption	1
Amended bill of complaint.....	2
Subpœna	27
Memorandum pursuant to Rule 12, Supreme Court of the United States.....	27
Marshal's return on subpœna.....	28
Subpœna, <i>toties quoties</i>	29
Memorandum pursuant to Rule 12, Supreme Court of the United States.....	30
Marshal's return of service.....	30
Additional subpœna, <i>toties quoties</i>	31
Memorandum pursuant to Rule 12, Supreme Court of the United States.....	32
Marshal's return of service.....	33
Answer of Anaconda Copper Company.....	33
Answer of Alice Gold & Silver Mining Co.....	70

	Page
Answer of John D. Ryan.....	107
Interlocutory decree	143
Final decree	152
Motion for temporary restraining order and injunction.....	156
Affidavit of T. J. Walsh.....	156
Injunction	164
Memorandum order, Hunt, J.....	166
Stipulation as to maps, exhibits, &c.....	177
Order as to maps, exhibits, &c.....	178
Decision, Bourquin, J., May 1, 1915.....	178
Memorandum decision, Bourquin, J., July 2, 1915.....	189
Stipulation of facts.....	191
Findings of fact.....	201
Petition for appeal by Geddes <i>et al.</i>	210
Order allowing appeal.....	211
Assignment of errors.....	211
Bond on appeal.....	215
Citation and service.....	218
Præcipe for record on appeal.....	219
Memorandum decision, February 4, 1916.....	221
Stipulation to consolidate records, &c.....	223
Petition for appeal by Geddes <i>et al.</i>	225
Order allowing appeal.....	226
Assignment of errors.....	226
Bond on appeal.....	231
Citation and service.....	234
Præcipe for record on appeal.....	235
Statement of evidence.....	237
Complainants' Exhibit 1—Articles of incorporation, Alice Mining Co.	238
Complainants' Exhibit 4—Deed, Alice Company to Anaconda Company.....	253
Testimony of L. O. Evans.....	265
John G. Maroney.....	273
C. W. Goodale.....	287
C. F. Kelley.....	306
Plaintiffs' Exhibit 2—Minutes stockholders' meeting, Alice Co., May 27, 1910.....	317
Plaintiffs' Exhibit 3—Minutes stockholders' meeting, Alice Co., May 8, 1911.....	347
Testimony of Howard C. Buzzo.....	371
Plaintiffs' Exhibit 4—List of dividends, Alice Mining Co.....	380
Testimony of John D. Ryan.....	381
Complainants' Exhibit A—Ryan, production Badger States Mine	441
B—Ryan, circular letter to Alice Company stockholders and exhibits...	442
C—Ryan, form of proxy.....	449
V—Ryan, letter, Buzzo to Walker.....	450
W—Ryan, letter, Buzzo to Walker.....	453
X—Ryan, letter, Buzzo to Walker.....	456
Y—Ryan, letter, Buzzo to Walker.....	457
Z—Ryan, letter, Buzzo to Walker.....	459

INDEX.

iii

Page

Testimony of A. H. Melin.....	461
Complainants' Exhibit	
D—Melin, incorporators' minutes and minutes of first meeting board of directors Amalgamated Company.	465
E—Melin, minutes adjourned meeting of directors of Amalgamated Company	505
F—Melin, minutes, stockholders' meeting Amalgamated Company.....	514
G—Melin, minutes directors' meeting Amalgamated Company	543
H—Melin, minutes, directors' meeting Amalgamated Company	547
I—Melin, minutes, directors' meeting Amalgamated Company	551
J—Melin, minutes, special meeting of directors Amalgamated Company.	564
P—Melin, statement furnished New York Stock Exchange by Amalgamated Company	569
K—Melin, statement issued to stockholders Amalgamated Company..	581
L—Melin, statement issued to stockholders Amalgamated Company..	589
M—Melin, statement issued to stockholders Amalgamated Company..	596
N—Melin, statement issued to stockholders Amalgamated Company..	600
O—Melin, statement issued to stockholders Amalgamated Company..	606
AA—Melin, statement, copper on hand December 31, 1909.....	612
BB—Melin, statement, copper on hand June 30, 1909.....	612
CC—Melin, statement, copper on hand December 31, 1908.....	612
DD—Melin, statement, copper on hand June 30, 1908.....	613
EE—Melin, statement, copper on hand December 31, 1907.....	613
FF—Melin, statement, copper on hand June 30, 1907.....	613
GG—Melin, statement, copper on hand December 31, 1906.....	613
HH—Melin, statement, copper on hand June 30, 1906.....	614
II—Melin, statement, copper on hand December 31, 1905.....	614
JJ—Melin, statement, copper on hand June 30, 1905.....	614
Testimony of Joseph Warner Allen.....	615

	Page
Complainants' Exhibit KK—Allen, minutes special meeting of directors Alice Mining Co.....	620
LL—Allen, form of proxy.....	654
MM—Allen, letters and telegrams.....	656
NN—Allen, minutes special meeting of directors of Alice Mining Co.....	665
OO—Blum, letter, Ferry to Blum.....	698
PP—Blum, telegram, Allen to Blum.....	699
Testimony of Thomas W. Lawson.....	699
Plaintiffs' Exhibit 1—Lawson, advertisement from Boston Herald.....	707
Plaintiffs' Exhibit 2—Lawson, advertisement from Boston Herald.....	709
Testimony of Arthur V. Corry.....	719
Walter Harvey Weed.....	775
Arthur V. Corry (recalled).....	828
J. R. Walker.....	831
Complainants' Exhibit 1—Walker, assay sheet.....	837
2—Walker, assay sheet.....	838
3—Walker, assay sheet.....	840
5—Walker, assay sheet.....	842
6—Walker, assay sheet.....	843
Testimony of C. F. Kelley.....	851
James L. Bruce.....	864
John Gillie.....	877
Howard J. Buzzo.....	887
John C. Febles.....	902
Defendants' Exhibit 3—Febles, assay sheet.....	906
Testimony of Reno H. Sales.....	909
John Gillie (recalled).....	930
Albert C. Burrage.....	957
Walter Harvey Weed (recalled).....	978
Memorandum of services performed by complainants' solicitors.....	982
Order approving statement of evidence.....	984
Clerk's certificate.....	985
Order of submission.....	987
Order directing filing of opinion and dissenting opinion and filing and recording of decree.....	988
Opinion, Gilbert, J.....	989
Dissenting opinion, Ross, J.....	991
Decree.....	1011
Order staying issuance of mandate under Rule 32.....	1012
Petition for appeal.....	1012
Assignment of errors.....	1013
Order allowing appeal and fixing amount of bond.....	1017
Bond on appeal.....	1018
Præcipe for certified transcript of record on appeal.....	1020
Certificate of clerk of U. S. circuit court of appeals to transcript of record on appeal to Supreme Court of the United States.....	1021
Citation and service.....	1022

No. _____

United States
Circuit Court of Appeals
for the Ninth Circuit

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, MARGARET ANN MEEHAN, EUGENE BLUM, ISAAC BLUM, EDWARD BLUM, ISADOR BAER, ALPHONS DREYFOOS; and ALPHONS DREYFOOS, EUGENE BLUM, DAVID C. GOLDBERG and EUGENE BASCHO, Co-partners doing business under the firm name and style of DREYFOOS, BLUM & COMPANY; LEOPOLD FREUND and ALICE FREY,

Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and JOHN D. RYAN, J. W. ALLEN, W. D. THORNTON, A. C. CARSON, and E. S. FERRY,

Appellees.

Transcript of Record

Upon appeal from the United States District Court
for the District of Montana.



Names and Addresses of Attorneys of Record.

Messrs. WALSH & NOLAN, Helena, Montana,

Solicitors for Complainants and Appellents.

C. F. KELLEY, ESQ., L. O. EVANS, ESQ., W. B.

RODGERS, ESQ. and D. GAY STIVERS,
ESQ., Butte, Montana.

Solicitors for Defendants and Appellees.

*In the District Court of the United States in and
for the District of Montana.*

No. 1086.—IN EQUITY.

PETER GEDDES, et al.,

Complainants,

vs.

ANACONDA COPPER MINING COMPANY, et al,

Defendants.

BE IT REMEMBERED, that on the 29th day of
June, 1912, the complainants, by leave of court,
filed their amended bill of complaint herein, in
the words and figures following to-wit:

*In the Circuit Court of the United States, Ninth
Circuit, in and for the District of Montana.*

PETER GEDDES, JOSEPH R. WALKER, JOSEPH
S. BAER, HENRY S. EVERETT, MARGARET
ANN MEEHAN, EUGENE BLUM, ISAAC
BLUM, EDWARD BLUM, ISADOR BAER,
ALPHONS DREYFOOS; and ALPHONS
DREYFOOS, EUGENE BLUM, DAVID C.
GOLDENBERG and EUGENE BASCHO, Co-
partners doing business under the firm name
and style of DREYFOOS, BLUM & COM-

PANY; LEOPOLD FREUND and ALICE
FREY,

Complainants,

vs.

ANACONDA COPPER MINING COMPANY, a Cor-
poration, ALICE GOLD AND SILVER MIN-
ING COMPANY, a Corporation, and JOHN D.
RYAN, J. W. ALLEN, W. D. THORNTON, A.
C. CARSON and E. S. FERRY,

Defendants.

Amended Bill of Complaint.

To the Honorable the Judges of the Circuit Court
of the United States, in and for the District of
Montana:

Come now the complainants above named,
Peter Geddes, Joseph R. Walker, Joseph S. Baer,
Henry S. Everett, Margaret Ann Meehan, Eugene
Blum, Isaac Blum, Edward Blum, Isador Baer,
Alphons Dreyfoos, and Alphons Dreyfoos, Eugene
Blum, David C. Goldenberg and Eugene Bascho,
co-partners doing business under the firm name of
Dreyfoos, Blum & Company, and Leopold Freund
and Alice Frey, and, for their amended bill of
complaint herein, leave of court having first been
had and obtained, complain and say:

That the complainants Alphons Dreyfoos, Eu-
gene Blum, David C. Goldenberg, Eugene
Bascho are co-partners doing business under
the firm name and style of Dreyfoos, Blum &
Company.

That the defendant Alice Gold and Silver Mining Company is a corporation which was organized under the laws of the territory of Utah on the 16th day of March, 1880, with powers and for the purposes set forth in its articles of incorporation, as follows:

"The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, mill sites, furnaces and reduction and refining work; to buy, sell and exchange mineral ores and bullion; to buy, lease, construct and operate roads, tramways, and freight and transportation routes, to facilitate the business of the company; to appropriate, buy and sell water, water rights and ways for conducting the same, and generally to do all kinds of business incident to, connected with, or convenient for the management of a general mining business, in the Territories of Utah, Montana, Idaho, and in any State or Territory of the United States."

And that the defendant Anaconda Copper Mining Company is a corporation organized under the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation as follows:

"To engage in, do and carry on any and all kinds of manufacturing, mining, mechanical, agricultural, chemical, electrical, mercantile commercial, industrial and productive business or businesses, and any and all business pertaining to ~~the~~ ^{the} milling, ~~reduction~~ ^{refining} and treating of ores and minerals:

To purchase or otherwise acquire, own, hold, rent, mine, develop, improve, work, deal in, lease, sell, convey, or otherwise dispose of mines, and mineral lands containing gold, silver, copper, lead, tin, cinnabar, iron, coal and any other, or any, metals or minerals of whatsoever kind or description;

To purchase or otherwise acquire, construct, own, hold, rent, use, operate, deal in, lease, sell, convey or otherwise dispose of smelting, reduction and refining mills and works for the treatment and reduction of ores and minerals, also saw mills and other mills and works for cutting, dressing and otherwise treating logs, timber, lumber and other woods;

To purchase or otherwise acquire, own, hold, rent, use, cultivate, deal in, lease, sell, convey or otherwise dispose of lands for agricultural and stock purposes and timber lands, and rights and interest therein;

To purchase or otherwise acquire, own, hold, rent, use, lease, sell, convey or otherwise dispose of rights to the use of streams and other bodies of water for floating, transporting, moving, storing and otherwise handling logs, timber, lumber and other things, products and materials, used in or about the business of the company, also waters and water rights, flowing streams, reservoirs, flumes, canals and ditches and rights of way therefor, for supplying water and furnishing power to the Company, and for all

other uses and purposes of the Company in any of its business;

To construct and operate ditches, canals, dams, and other means of conveying and utilizing water for irrigation, power, transportation and other useful purposes;

To purchase, hold, develop, improve, use, lease, sell, convey or otherwise dispose of water powers and sites thereof and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same.

To purchase, lay out, plat, develop, lease, sell, deal in, convey or otherwise use or dispose of townsites or towns, or the lots, blocks or subdivisions thereof, or lots, blocks or subdivisions in any town, village or city;

To acquire by purchase or otherwise, construct, own, rent, use, operate, lease, sell, convey or otherwise dispose of electric light and power plants, works, lines, systems and equipments and telegraph and telephone plants, works, lines, systems, and equipments, also roads, bridges, ferries, tramways, cable lines, roads, systems and equipments and other means of conveyance and transportation, and all rights of way therefor, and all rights to collect tolls, rates, fares and charges for the use and service thereof, and all franchises and privileges necessary therefor;

To acquire by purchase or otherwise, own, use, deal in, sell, assign, convey or otherwise dispose of patents and patent rights and licenses for any

and all kinds of inventions, devices and improvements;

To acquire by purchase or otherwise, take, own, hold, deal in, sell, assign, transfer, or otherwise dispose of stocks and shares of stock of other incorporated companies, and bonds, negotiable instruments and other obligations and securities, with power to this Company to endorse and to guarantee any bonds, negotiable instruments, or other obligations dealt in or sold by it, or which may be, or may have been, made or issued by any corporation in which this company shall own a majority of the stock;

To purchase or otherwise acquire, construct, own, rent, equip, deal in, lease, sell, convey or otherwise dispose of, and to do or carry on any and all business pertaining to, or usually done or carried on by or at, hotels, inns, taverns, lodging houses, boarding houses, public halls, buildings, grounds, parks, tracks, and other resorts for business, sport, exercises, recreation and amusement;

To acquire, buy, own, hold, sell, exchange, and deal in any and all kinds of merchandise, personal property and real estate wheresoever within the State of Montana, or elsewhere without said state;

To lend money for profit and to take, hold and realize upon securities therefor;

To borrow money for the business of the Company and to give security therefor; and, for the purpose of raising money necessary for the transaction of the business of the Company or any of its business, or the acquisition of property, to ex-

ecute bonds, debentures, promissory notes, or other evidences of indebtedness, and to secure the same by mortgage or pledge of all or any part of the property of the Company, real or personal;

To do business on commission, and to act as agent or attorney of or for others, persons or corporations, in the doing or transacting of any business which this Company may or can do or carry on for itself.

To carry on any other business, or to do any other thing in connection with the objects and purposes above mentioned, that may be necessary or proper to successfully accomplish or promote said objects and purposes."

That your orators are, and for more than two years last past have been, the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company, as follows, to-wit: the said Peter Geddes, 3100 shares; Joseph R. Walker, 2110 shares; Joseph S. Baer, 700 shares; Henry S. Everett, 900 shares; Margaret Ann Meehan, 1050 shares; Eugene Blum, 400 shares; Isaac Blum, 1800 shares; Edward Blum, 1175 shares; Isador Baer, 200 shares; Alphons Dreyfoos, 500 shares; Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, and Eugene Bascho as members of the firm of Dreyfoos, Blum & Company, 400 shares; Leopold Freund, 100 shares; Alice Frey, 25 shares.

That the said Alice Gold and Silver Mining Company is, and for many years last past, has been, the owner of extensive and very valuable mining ground, aggregating about 340 acres, situated in

the County of Silver Bow, State of Montana, and of improvements thereon, and of property used in connection therewith, and in the prosecution of its business of mining and reducing ores and selling and disposing of the metals extracted therefrom and other products, all of which property is, and for more than two years last past has been of the value of more than fifteen million dollars; that the said mining claims of the said Alice Gold and Silver Mining Company have been extensively worked and ores of immense value taken therefrom, and that they are within the rich mineral region in and adjacent to the city of Butte in the County of Silver Bow, State of Montana.

That prior to the year 1899 there were a large number of independent companies engaged in mining at the said city of Butte, and in extracting the ores from claims within the mining region aforesaid and in reducing the same, and in selling and disposing of the metals extracted from the same, the greater portion of which were by the said companies transported from the said city of Butte and within the State of Montana to the city of New York in the State of New York and to other markets in the eastern states and beyond the State of Montana where the same were, by the said companies, sold and disposed of, and that among other companies so engaged in such business were the defendants the Anaconda Copper Mining Company and the Alice Gold and Silver Mining Company, the Washoe Copper Company, the Boston and Montana Consolidated Copper and Silver Min-

ing Company, the Butte and Boston Consolidated Mining Company, the Parrot Silver and Copper Mining Company, the Colorado Smelting and Mining Company, a group of companies known collectively as the Heinze Companies by reason of the fact that one F. Augustus Heinze was the chief factor therein, including the Montana Ore Purchasing Company, the Johnstown Mining Company, the Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark Companies, owing to the fact that one W. A. Clark was the chief factor in said companies, including the Colusa Parrot Mining and Smelting Company and the Original Consolidated Mining Company, and that all of the said corporations were, at the time last hereinabove mentioned, competing with each other in the sale of the products of the mines so owned and operated by them, as aforesaid, in the said markets within the United States and beyond the State of Montana, where such products were by said companies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save, also, that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company, the stock of said companies being held practically by the same persons.

That at the time last hereinabove mentioned a very large part of the copper produced in the

world, and a still larger part of that produced in the United States was, as it still is, produced within the State of Montana from ores mined from within the said mining region at and near the city of Butte, and that during all of the times since prior to the year 1899 any individual, corporation or association that could control such corporations as produced the greater portion of the mineral output of the city of Butte and vicinity, and by reason of such fact in large part control the supply of copper available for use in the several states of the union, could fix and regulate the price of that commodity in the markets of the union and in states other than the state of Montana.

That in the year 1899 certain individuals, with a view among other things, so to control the production of copper and the supply thereof, and to fix and regulate the price thereof in the markets of the world, and to suppress competition in the sale thereof, and particularly in the product of the mines at and near the city of Butte, when the same should be transported for sale to markets in the eastern states, entered into a conspiracy in restraint of trade and commerce among the several states, and, to carry out the purpose of such conspiracy, organized, under the laws of the State of New Jersey, a corporation called the Amalgamated Copper Company, having powers as recited in its articles of incorporation, among others, "To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, ex-

changing, and otherwise producing and dealing in gold, silver, copper, metals and minerals, and in the products and byproducts thereof of every kind and description, and by whatsoever process the same can be or may be hereafter produced; and generally and without limit as to amount, to buy, sell, exchange, lease, acquire, and deal in lands, mines and minerals, rights and claims and in the above specified products, and to conduct all business appurtenant thereto. — — To purchase, subscribe for or otherwise acquire, and to hold the shares, stocks or other obligations of any company organized under the laws of this state, or of any other state, or of any territory or colony of the United States, or of any foreign country, and to sell or exchange the same, or upon a distribution of the assets or division of profits, to distribute any such shares, stocks, or obligations or the proceeds thereof amongst the stockholders of this company," which said corporation, it was intended by the said conspirators who organized the same, should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining, and particularly in copper mining, at and near the city of Butte, as that it could control such corporations, and, through the control of such corporations, regulate the supply and fix the price of copper in the markets of the world.

That the said Amalgamated Copper Company was organized with a capital stock of seventy-five million dollars, and that prior to the month of June, 1901 it acquired, in exchange for certain of

its capital stock, all of the stock of the Anaconda Copper Mining Company, the Washoe Copper Company, the Parrot Silver and Copper Mining Company and the Big Blackfoot Milling Company, a lumber company engaged in supplying timber for use in the Butte mines, and the Hennessy Mercantile Company, a trading company engaged in general merchandising and dealing extensively with the men employed in the said mines. That thereafter, on June 6th, 1901, the capital stock of the Amalgamated Copper Company was increased to one hundred and fifty-five million dollars, and that shortly thereafter it acquired all but a few shares of the stock of the said Boston and Montana Consolidated Copper and Silver Mining Company, and the Butte and Boston Consolidated Mining Company, and likewise acquired all or practically all of the stock of the above mentioned Colorado Mining and Smelting Company, issuing in exchange therefor, its own stock.

That at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between the said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, on the one side, and the said F. Augustus Heinze and one or more of the said Heinze companies on the other side, and that upon the acquisition by the said Amalgamated Copper Company of the stock of said Boston and Montana Consolidated Copper and Silver

Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company, and all or the greater portion of its constituent companies doing business at or near the city of Butte, and that as a result of such litigation all the properties of the said Heinze Companies, together with the properties of other companies organized by the said Heinze since the organization of the said Amalgamated Copper Company, among others, the Corra-Rock Island Mining Company, passed to a corporation organized by the said Amalgamated Copper Company, or by parties intimately associated with it, known as the Red Metal Mining Company, with a capital stock of eleven million dollars, hereinafter referred to, the purchase price of said properties being, as your orators are informed and believe, ten million, five hundred thousand dollars, the acquisition of the said Heinze properties having been so accomplished in the pursuit of the purpose with which the said Amalgamated Copper Company was organized, as hereinbefore set forth.

That prior to the year 1910 the said Amalgamated Copper Company had become the owner of practically all of the stock of the said Red Metal Mining Company, and had likewise become the owner, as your orators are informed and believe, of more than a majority of the stock of various companies engaged in ~~the~~ business of mining and smelting copper ores in the state of Utah and elsewhere in the mining re-

gion in the western part of the United States including the International Smelting and Refining Company, a corporation having a capital stock of fifty million dollars, of which ten million dollars have been issued, and operating on a large scale in the State of Utah, and in selling and disposing of copper and other metals produced by said companies in the markets of the eastern states, in the same manner as hereinbefore mentioned, in connection with the corporations operating at or near the City of Butte, all of which interest was so acquired by the said Amalgamated Copper Company with a view more completely to carry out the purpose for which the said corporation was organized, as hereinbefore set forth.

That during the year 1910, with the same purpose and to carry out more effectually the plan and purpose of the said organization of the said Amalgamated Copper Company, as hereinbefore set forth, it was, by said corporation, and the managing officers and those directing its affairs, deemed advisable that the said defendant, Anaconda Copper Mining Company, should become invested with the title to all of the properties of the various companies of the said Amalgamated Copper Company operating at or near the city of Butte, and with the title to all mining properties located at or near said city of Butte, which, by development or operation, might give rise to any competition in the production or sale of copper or other metals found in association with it, or that might be a potential competitor in the produc-

tion and sale of copper, and to that end the said Amalgamated Copper Company, in association with the said defendant Anaconda Copper Mining Company, purchased all of the properties of the before-mentioned Clark Companies, at or near the city of Butte, save some small and comparatively undeveloped tracts yielding zinc, and copper only in insignificant amounts, if at all, paying therefor, as your orators are informed and believe, twelve million dollars, and that pursuant to the purpose hereinbefore last above mentioned the title to all of the properties of the said Clark companies was transferred to the defendant Anaconda Copper Mining Company, the capital stock of the said company having been, with a view to carrying out such purpose, increased in the month of March, 1910, from thirty million dollars to one hundred and fifty million dollars. That pursuant to such purpose the said Amalgamated Copper Company caused all of the property of the said Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Developing Company, which meanwhile had succeeded to all the rights of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Copper Company and the Red Metal Mining Company, to be transferred to the said Anaconda Copper Mining Company. which said Anaconda Copper Mining Company thus became the owner of practically all the mines

at or near the city of Butte producing copper, save those of the North Butte Mining Company, producing a relatively unimportant part of the total output of the said mines at and near the city of Butte, as well as of two of the three copper smelters operating in the state of Montana, the one of which so acquired having been, prior to such transfer, the property of the Washoe Copper Company, and the other of the Boston and Montana Consolidated Copper and Silver Mining Company. That in each instance the said Anaconda Copper Mining Company paid for the said properties so acquired by it with its own stock issued in payment pursuant to resolutions procured to be adopted by the said Amalgamated Copper Company at meetings of stockholders of the said selling companies respectively, and which resolutions the said Amalgamated Copper Company was enabled to carry by reason of its ownership of all, or the greater portion, of the stock of the said companies.

That prior to the year 1910, the said Amalgamated Copper Company and the persons managing and directing its affairs, with the same purpose with which it was organized and which it has pursued since it came into existence, and with a view to controlling all the mining operations carried on at or near the city of Butte and the corporations engaged in such mining, or which by reason of their ownership of said properties, at or near said city, might engage in said business or become competitors in the production and the sale

of copper, had caused to be acquired by a certain corporation known as the Butte Coalition Company, a corporation organized by the said Amalgamated Copper Company, or the said parties so managing and directing its affairs and of the stock of which it or they at all times since its organization held and owned a majority and a controlling interest, a majority of the stock of the defendant Alice Gold and Silver Mining Company, which they had caused to be transferred to various persons, most of whom are officers or employes of one or the other of the said companies, to hold in trust for the said Butte Coalition Company, and that by reason of such ownership of more than a majority of the stock of the said defendant Alice Gold and Silver Mining Company, the said Amalgamated Copper Company and the said Anaconda Copper Mining Company had, for some time prior to the year 1910, controlled and dominated the business and affairs of the said Alice Gold and Silver Mining Company, and through their servants, agents and representatives have elected boards of directors of the said Alice Gold and Silver Mining Company, and that through such boards of directors have been in possession for more than two years last past of all of the mining properties of the said defendant Alice Gold and Silver Mining Company, which are situated, as hereinbefore set forth, at or near the city of Butte, and which are immediately adjacent to the mining properties now held by the said Anaconda Copper Mining Company, and which said prop-

erties of the said Alice Gold and Silver Mining Company are rich in ores of zinc, copper, gold and silver.

That prior to the 27th day of May, 1910, the directors of the said Alice Gold and Silver Mining Company, under the direction of the said Amalgamated Copper Company and the said Anaconda Copper Mining Company and the officers thereof, and the parties directing the business and operations of the said companies, caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the city of Salt Lake on the 27th day of May, 1910, for the purpose of considering the proposition, as the same was stated in the notice calling such meeting, of transferring all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company, all of which was done pursuant to the purpose of said Amalgamated Copper Company and the parties directing its affairs, as hereinbefore set forth, to invest the said Anaconda Copper Mining Company with the title to all of the metal-producing mines and mining properties or properties capable of producing any of the valuable metals at or near the city of Butte, as hereinbefore set forth, the more effectually to carry out the purposes with which the said Amalgamated Copper Company was organized, as hereinbefore set forth.

That pursuant to such notice and call a meeting

of the stockholders of the said Alice Gold and Silver Mining Company was held at the city of Salt Lake on the 27th day of May, 1910. That at such meeting there was represented stock to the number of 310,963 shares of the total 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company, 287,000 shares of which were owned by the said Amalgamated Copper Company or the said Anaconda Copper Mining Company, though standing on the books of the company in the names of various parties, all of which stock was voted at the said meeting by one E. S. Ferry and one L. O. Evans, attorneys and employes of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company under proxies from the nominal holders of said 287,000 shares of the stock of the said company.

That at the said meeting so called and held a resolution was presented by the said L. O. Evans authorizing and directing the board of directors of the said company to transfer all of the property of the said Alice Gold and Silver Mining Company and the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said company.

That notwithstanding the protest of your orators Peter Geddes, Joseph R. Walker, Eugene Blum, Isaac Blum, Edward Blum, Henry S. Everett, Margaret Ann Meehan, Isador Baer, Joseph Baer, Alphons Dreyfoos, and Dreyfoos, Blum & Company, the said resolution was carried by a vote of 298,598 shares for and 13,385 shares

against, the said E. S. Ferry and L. O. Evans voting all of the shares for which they held proxies in favor of the said resolution and all of your orators present at the said meeting voting against the same. And your orators aver that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not, at the time said meeting was called, and have not since been at any time, worth more than \$1,020,000, as the said Amalgamated Copper Company and the said Anaconda Copper Mining Company, and all of the parties concerned in the effort so to procure the transfer of the said properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all times well knew, while the properties of the said defendant Alice Gold and Silver Mining Company have at all of said times, as the said corporations and persons last above mentioned well knew, been worth upwards of fifteen million dollars.

That acting under the pretended authority of the said resolution so adopted at the stockholders' meeting, the directors of the said Alice Gold and Silver Mining Company, acting under the direction of the said Amalgamated Copper Company and the said Anaconda Copper Mining Company, directed the officers of the said company to carry out said resolution and to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company,

and that acting under the pretended authority of the said resolutions of the said stockholders' meeting, and the said board of directors, on the 31st day of May, 1910, one John D. Ryan, the president of the said Alice Gold and Silver Mining Company and one J. W. Allen, its secretary, in the name of the said Alice Gold and Silver Mining Company, executed in form a deed of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which said deed was, on the 24th day of June, 1910, recorded in the office of the county recorder of the county of Silver Bow, State of Montana. The said John D. Ryan who, in form, executed the said deed in behalf of the said Alice Gold and Silver Mining Company as the president thereof, is, and at the time of the execution thereof was, the president of the Amalgamated Copper Company and a member of the board of directors thereof, and is likewise, and was, at the time of the execution of the said deed, a member of the board of directors of the Anaconda Copper Mining Company, and is the officer of each of the said companies entrusted with the immediate direction of the affairs of both of the said companies at and about the city of Butte.

That the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry are, and since prior to the 27th day of May, 1910 have been, each servants and employees of the said Amalgamated Copper company and the said Anaconda Copper Mining Company, or of one or more of the corpor-

ations controlled by the said Amalgamated Copper Company, and in all things done by them, as hereinbefore set forth, they acted under the direction and pursuant to instructions received from the said Amalgamated Copper Company.

That having procured the transfer in form of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, the said defendant Anaconda Copper Mining Company and the said Amalgamated Copper Company and the individuals controlling and directing the affairs of both of the said companies, instituted proceedings in the District Court of the Third Judicial District of the State of Utah, in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending, being resisted by your orators.

Your orators further aver that the United Metals Selling Company is a corporation organized in the year 1900, with a capital stock of five million dollars, for the purpose of doing a general commission business in metals, and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company it has acted as selling agent for the producing companies, so as aforesaid controlled by the Amalgamated Copper Company, under arrangements entered into between it, the said United Metals Selling Company and the said Amalgamated Copper Company, and that it had become, by the month of March, 1911, the largest copper broker in the

world, marketing, during the year 1910, as your orators are informed and believe, upwards of five hundred million pounds of copper.

That by said month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said United Metals Selling Company, or of enough thereof so as that it controls the said United Metals Selling Company, of which the before-mentioned John D. Ryan has become the president, and that through the said United Metals Selling Company the said Amalgamated Copper Company controls the sale of the copper product not only of the mines of the said Anaconda Copper Mining Company, after the transfers hereinbefore referred to, and of the other companies so as aforesaid controlled by the Amalgamated Copper Company, but of the product of most of the producing mines of the United States.

That this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

For asmuch as your orators can have no adequate relief, except in this court, and to the end, therefore, that the defendants may, if they can show why your orators should not have the relief hereby prayed, and may make a full disclosure and discovery of the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged; but not under

oath an answer under oath being hereby expressly waived.

That it be by the court adjudged and decreed that the said deed so as aforesaid in form executed by the said Alice Gold and Silver Mining Company to the defendant Anaconda Copper Mining Company bearing date the 31st day of May, 1910, is null and void, and that the defendant Anaconda Copper Mining Company be required to deliver up the same for cancellation, and that the court adjudge and direct that the certificates of stock of the Anaconda Copper Mining Company issued to the said Alice Gold and Silver Mining Company in payment for the same be returned to the said Anaconda Copper Mining Company, together with any dividends or profits that may have been paid to the said Alice Gold and Silver Mining Company thereon; that the defendants and each of them be restrained and enjoined from disposing or attempting to dispose of any of the stock of the said Anaconda Copper Mining Company so delivered to the said Alice Gold and Silver Mining Company in pretended payment for the property of the said last named company until the final determination of this action. That the defendants be likewise enjoined and restrained, pending the determination of this action, from prosecuting any proceedings for the dissolution of the said Alice Gold and Silver Mining Company, and particularly from prosecuting further, during the pendency of this action, the proceedings so as aforesaid pending in the District Court of the Third Judicial District of

the State of Utah, in and for the County of Salt Lake, and that your orators have such further and other relief as to the court may seem just, including their costs and reasonable counsel fees for the prosecution of this action, the amount of which shall be fixed and determined by the court.

May it please your Honors to grant unto your orators a writ of subpoena of the United States of America, directed to the said Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, commanding them on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

WALSH & NOLAN,
Solicitors for Complainants.

T. J. WALSH,
Counsel for Complainants.

United States of America,
District of Montana,—ss.

T. J. Walsh being duly sworn deposes and says that he is one of the solicitors for the above named complainants, and makes this verification on their behalf; that he has read the foregoing complaint and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

Affiant further says that he makes this verification for the reason that none of the complainants

are or reside within the County of Lewis and Clark, State of Montana, in which county and state affiant is and resides.

T. J. WALSH.

Subscribed and sworn to before me this 28th day of December, 1911.

J. R. WINE, JR.,

Notary Public for the State of Montana, residing at Helena.

[N. S.] My commission expires Nov. 13, 1914.

Filed June 29, 1912, Geo. W. Sproule, Clerk.

That on the 6th day of November, 1911, upon the filing of the original bill herein, a subpoena in equity was duly issued in the words and figures following, to-wit:

[Subpoena.]

Circuit Court of the United States, Ninth Judicial Circuit, District of Montana.

IN EQUITY.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, GREETING:

To Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry,
Defendants.

YOU ARE HEREBY COMMANDED, That you be and appear in said Circuit Court of the United States aforesaid, at the Court Room in FEDERAL BUILDING, HELENA, MONTANA, on the 4th day of December, A. D. 1911, to answer a Bill of Complaint exhibited against you in said Court by Peter

Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Ferdinand Kurzman, John Frankenheimer, Seymour P. Kurzman, Abin L. Gutman and Walter Frank, co-partners doing business under the firm name and style of Kurzman & Frankenheimer; Leopold Freund and Alice Frey, Complainants, and do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable Edward D. White, Chief Justice of the United States, this 6th day of November, in the year of our Lord one thousand nine hundred and eleven, and of our Independence the 136,

[Court Seal]

GEO. W. SPROULE,

Clerk.

By C. R. GARLOW,

Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

YOU ARE HEREBY REQUIRED to enter your appearance in the above suit, on or before the first Monday of December, next, at the Clerk's Office of

said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

Messrs. WALSH & NOLAN,

Solicitors for Complainants, Helena, Montana.

MARSHAL'S RETURN.

United States of America,
District of Montana.

I HEREBY CERTIFY AND RETURN, that I received the within Subpoena in Equity on the seventh day of November, 1911, and duly served the same on the Anaconda Copper Mining Company a corporation, by delivering to and leaving with Cornelius F. Kelley, Secretary of said defendant corporation, at Butte, Silver Bow County in said district, on the seventh day of November, 1911, a copy thereof to which was attached a certified copy of the Bill of Complaint filed herein. I further certify that I served said Subpoena in Equity on the Alice Gold and Silver Mining Company a Corporation, by delivering to and leaving with Howard F. Buzzo, the Manager in charge of the Alice mines and property at Walkerville, Montana, at Walkerville Silver Bow County in said District, on the tenth of November, 1911, a copy thereof. I further certify that after diligent search and inquiry I was unable to find John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry in said District.

Dated Butte, Montana, November 11, 1911.

WILLIAM LINDSAY,

United States Marshal.

By J. G. SANDERS, Deputy.

Filed Nov. 13th, 1911. Geo. W. Sproule, Clerk.

Thereafter, on December 5th, 1911, a subpoena toties quoties was duly issued herein in the words and figures following, to-wit:

[**Subpoena, Toties Quoties.**]

*Circuit Court of the United States, Ninth Judicial
Circuit, District of Montana.*

IN EQUITY.

The President of the United States of America,
Greeting:

To Anaconda Copper Mining Company, a corporation,
Alice Gold and Silver Mining Company,
a corporation, and John D. Ryan, J. W. Allen,
W. D. Thornton, A. C. Carson and G. S. Ferry,
Defendants.

YOU ARE HEREBY COMMANDED, That you
be and appear in said Circuit Court of the United
States aforesaid, at the Court Room in FEDERAL
BUILDING, HELENA, MONTANA, on the 1st day
of January, A. D. 1912, to answer a Bill of Com-
plaint exhibited against you in said Court by Peter
Geddes, Joseph R. Walker, Joseph S. Baer, Henry
S. Everett, Margaret Ann Meehan, Eugene Blum,
Isaac Blum, Edward Blum, Isador Baer, Alphons
Dreyfoos; Alphons Dreyfoos, Eugene Blum, David
C. Goldenberg, Eugene Bascho, co-partners doing
business under the firm name and style of Drey-
foos, Blum & Company; Ferdinand Kurzman,

John Frankenheimer, Seymour P. Kurzman, Abin L. Gutman and Walter Frank, co-partners doing business under the firm name and style of Kurzman & Frankenheimer; Leopold Freund and Alice Frey, Complainants, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 5th day of December, in the year of our Lord one thousand nine hundred and eleven, and of our Independence the 136.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court U. S. YOU ARE HEREBY REQUIRED to enter your appearance in the above suit on or before the first Monday of January next, at the Clerk's office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

WALSH & NOLAN,

Solicitors for Complainants, Helena, Montana.

UNITED STATES MARSHAL'S OFFICE.

MARSHAL'S RETURN.

United States of America,

District of Montana.

I HEREBY CERTIFY that I received the within subpoena in Equity on the 6th day of December,

1911, at Butte Montana, and duly served the same on John D. Ryan individually, by delivering and leaving a copy thereof at the residence of said John D. Ryan in the hands of one Anna Radin, an adult person in charge of said residence, at Butte, Silver Bow County in said District, on the 6th day of December, A. D. 1911.

I further certify that after diligent search, I was unable to find J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry in said District.

WILLIAM LINDSAY,

United States Marshal.

By J. G. SANDERS, Deputy.

Dated Butte, Montana, December 7th, 1911.

Filed Dec. 9th, 1911, Geo. W. Sproule, Clerk.

Thereafter, on April 18, 1912, an additional subpoena toties quoties was duly issued herein, in the words and figures following, to-wit:

[Additional Subpoena, Toties Quoties.]

*United States of America, District Court of the
United States, District of Montana.*

IN EQUITY.

The President of the United States of America,
Greeting:

To Alice Gold and Silver Mining Company, a corporation, Defendant.

YOU ARE HEREBY COMMANDED, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Federal Building, Helena, Montana, on the third day of

June, A. D. 1912, to answer a Bill of Complaint exhibited against you in said Court by Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Ferdinand Kurzman, John Frankenheimer, Seymour P. Kurzman, Abin L. Gutman and Walter Frank, co-partners doing business under the firm name and style of Kurzman & Frankenheimer; Leopold Freund and Alice Frey, Complainants, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable Geo. M. Bourquin, Judge of the District Court of the United States for the District of Montana, this 18th day of April in the year of our Lord one thousand nine hundred and twelve and of our Independence the 136.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12, SUPREME COURT U. S.

YOU ARE HEREBY REQUIRED, to enter your appearance in the above suit on or before the first Monday of June next, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said

Bill will be taken pro confesso.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

WALSH & NOLAN,

Solicitors for Complainants,

Helena, Montana.

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF MONTANA.

I HEREBY CERTIFY, that I received the within writ on the twentieth day of April, 1912, and personally served the same on the 25th day of April, 1912, on the Alice Gold and Silver Mining Company, a corporation, by delivering to and leaving with John D. Ryan, President of said defendant corporation, named therein personally at Butte in the County of Silver Bow in said district, a copy thereof.

WILLIAM LINDSAY,

U. S. Marshal.

By J. G. SANDERS,

Deputy.

Butte, April 25, 1912.

Filed April 27, 1912. Geo. W. Sproule, Clerk.

Thereafter, on March 7, 1913, the Answer of defendant A. C. M. Co. to the amended bill of complaint was duly filed herein, in the words and figures following, to-wit:

[Same title of Court and Cause.]

Answer of Defendant, ~~Alice Gold and Silver~~ ^{Anaconda Copper} Mining

Company, a Corporation, to the Amended

Bill of Complaint.

This defendant, Anaconda Copper Mining Company, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended bill of complaint herein, comes and answers thereto, or to so much thereof as it is advised is material to be answered, and says:

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether the complainants Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, or either of them, are or were co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, or otherwise, and therefore asks that Compainants be required to produce proof of the said allegations.

Admits that the defendant Alice Gold and Silver Mining Company is a corporation which was organized under the laws of the Territory of Utah on or about the 6th day of March, 1880, with powers and for the purposes set forth in its articles of incorporation, among said purposes and powers being those specified in said amended bill of complaint on page 2 thereof.

Admits that the defendant Anaconda Copper Mining Company is a corporation organized under the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation, among such purposes being those specified in the amended bill of complaint herein.

Admits that complainants Peter Geddes, Margaret Ann Meehan, Eugene Blum, Edward Blum, Al-

phons Dreyfoos, Dreyfoos, Blum & Company, Leopold Freund and Alice Frey are, and for more than two years last past have been the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company, as alleged in said amended bill of complaint.

Admits that the complainant Joseph R. Walker was on May 27, 1910, and ever since has been the owner of 360 shares, the complainant Joseph S. Baer on May 27, 1910, was the owner of 300 shares, and is now the owner of 400 shares, the complainant Henry S. Everett on May 27, 1910, was the owner of 400 shares, and is now the owner of 900 shares, the complainant Isaac Blum on May 27, 1910, was the owner of 1400 shares, and is now the owner of 1600 shares; that the complainant Isador Baer is now the owner of 200 shares, but denies that on the 27th day of May, 1910, he was the owner of any shares whatsoever of the capital stock of the said Alice Gold & Silver Mining Company; and denies each and every allegation and each and every part thereof in said amended bill of complaint contained concerning the ownership by orators or complainants or any of them of shares of the capital stock of the said Alice Gold and Silver Mining Company except as hereinabove admitted.

Admits that prior to the granting and conveying of all of its property to the defendant Anaconda Copper Mining Company on the 31st day of May, 1910, the said Alice Gold and Silver Mining Com-

pany was and had been for many years prior thereto, the owner of extensive mining ground, situate in the County of Silver Bow, State of Montana, and of improvements thereon and of certain property used in connection therewith; denies that the same aggregated about 340 acres or any greater number of acres than 145; and denies that during the period of more than ten years last past the said corporation has been engaged in the prosecution of any business of mining or reducing ores or selling or disposing of the materials extracted therefrom or other products except on a very inconsequential scale; denies that the property or any property of the said corporation is now or at any time has been of the value of \$15,000,000.00, or that the same is now or at any time has been of a value of more than \$1,000,000.00, and alleges that the value of the property of the said Alice Company is now and for more than ten years last past has been of an almost wholly speculative character; admits that the said mining claims of the said Alice Company have been extensively worked and ores of large value taken therefrom; denies that said claims are within the rich mineral region in or adjacent to the City of Butte, Silver Bow County, State of Montana, and alleges that so far as is shown by any development made to the present time and so far as is at present known the said claims are without the rich mineral region lying in and about the City of Butte.

And this defendant alleges the facts to be that

the said Alice Gold and Silver Mining Company was incorporated in the year 1880 with a capital stock consisting of 400,000 shares of the par value or \$25.00 per share. That all or all but a very few shares of the capital stock of the said corporation were issued in payment for the mining claims acquired by it. That soon after its incorporation, mining operations were commenced by said Alice Company upon its said mining claims and quantities of ore bearing silver and gold, their value being mainly in the silver contained therein, were extracted. That mining operations were conducted by said company on a somewhat extensive scale, but as the said ore bodies were mined out and the workings attained depth, the values of the ore became gradually less and the ores became very refractory and base and difficult and expensive of reduction, and that about the year 1893 the price of silver became very much less, so that it became impossible to work or mine the said properties at a profit, and that the total proceeds derived by said Alice Company from its mining operations and paid to its stockholders as dividends or available as dividends has been during the whole period of its existence less than \$1,100,000.00. That the mining operations of said company conducted since the year 1897, have resulted in a loss to said company. In the early history of said Alice Company, it owned and operated a large stamp mill for the reduction of its ores, but that in later years as the said ores became base and

refractory and of low grade, the said mill became useless and prior to the year 1907, was destroyed by fire. The machinery and other equipment used in and about said Alice mines in operating the same became more or less worn out and obsolete, and was inadequate to operate the said properties at the depths to which the working had been carried, so that on May 27, 1910, and for some period prior thereto the assets of the said Alice Company in the way of improvements, machinery or other property used in connection with its mining claims were of very small value. That the said mining claims formerly owned by the said Alice Company have not now and have not had for a period of more than ten years last past any ores or ore bodies developed or showing of any commercial value, the same being of such low grade and value and of such a base and refractory character that they could not be profitably worked under any known process. Of the property formerly owned by said Alice Company, there is a considerable portion of the same which is undeveloped and which may develop ore bodies of value, but that to develop the same, so as to make available any ore bodies which may be contained within them, it will be necessary to conduct developments on a very extensive scale and to very great depths, necessitating the expenditure of large sums of money, probably aggregating many hundreds of thousands of dollars. That on May 27, 1910, the said Alice Company, because of the unprofitable

character of its operations for a number of years, had no funds, and had incurred indebtedness in the necessary care and maintenance of its property, and that said indebtedness on the 27th day of May, 1910, was in excess of the sum of \$35,000.00, to meet which the said Alice Company had no funds or assets except its mining claims.

Admits that prior to the year 1899, there were a number of independent companies engaged in mining at the City of Butte and in extracting the ores from claims within the mining region in and about the City of Butte and in reducing the same and in selling and disposing of the minerals extracted from the same, the greater portion of which were by the said companies transported from the City of Butte, in the State of Montana, to the City of New York, and other markets in the eastern states and beyond the State of Montana, where the same were by the said companies sold and disposed of, and that among other companies so engaged in such business were the defendants Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company, the Washoe Copper Company, the Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Parrott Silver and Copper Mining Company, the Colorado Mining and Smelting Company, a group of companies known collectively as the Heinze companies, by reason of the fact that one F. Augustus Heinze was the chief factor therein,

including the Montana Ore Purchasing Company, Johnstown Mining Company, Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark corporations, owing to the fact that one W. A. Clark was the chief factor in said companies, being composed of the Coluse Parrot Mining and Smelting Company and the Original Mining Company; and denies that all of the said corporations were at any time competing with each other in the sale of the products of the mines so owned and operated by them as aforesaid in the said markets within the United States or beyond the State of Montana, where said products were by such companies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save also that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company, and denies that the stock of said last named companies was held practically by the same persons, and defendant alleges the fact to be that the operations of the said Alice Company in and for several years prior to the year 1899 had been on a small scale, and that the only products of value at any time produced by the said Alice Company consisted of silver and gold and that no copper was ever produced or marketed from the mines of the said Alice Company. That none of the said corporations above named

ever sold its copper or other products directly to the consumer, but that during all of the years prior to 1899, as well as since, because of the fact that it has always been the custom in the copper trade for sales of copper to be made subject to delivery at any place in the world designated by the purchaser, it has been necessary that the sales thereof be handled by large concerns, and that the copper and other products of said mining companies have always been disposed of by being consigned to one or more of the large selling agencies maintained and conducted in the United States.

Admits that in the year 1899, and at all times since, a large share of the copper produced in the world, and a still larger portion of that produced in the United States was and still is produced within the State of Montana from ores mined within the said mining region at and near the City of Butte; and alleges that the proportionate amount of the copper produced in the United States and in the world produced in the said Butte mining region has been growing less each year since the year 1899, and that in the years 1910 and 1911, the Butte mines produced about 23% of the copper produced within the United States, and about 13% of the world's production; deny that during all or any of the time either since or prior to the year 1899, any individual or corporation or association that could control such corporations, or any of them, as produced the greater or any portion of all of the mineral output of the City of Butte

or vicinity could by reason of such fact or otherwise or at all control the supply of copper available for use in the several states of the union or elsewhere, or could fix or regulate the price of that commodity or of any commodity or metal in the markets of the union or in any market or state whatsoever.

Denies that in the year 1899, or at any other times, certain or any individuals or individual, with a view to controlling in any way the production of copper or the supply thereof or to fix or regulate the price thereof in any market or at any place whatsoever, or to suppress competition in the sale thereof, or particularly or at all of the products of any of the mines at or near the City of Butte when the same should be transported for sale to any market in the eastern states or elsewhere, or at any time or under any conditions whatsoever or with any view or purpose whatsoever, entered into any conspiracy in restraint of trade or commerce among the several or any states or otherwise or at all; and deny that for any of the purposes aforesaid or for the purpose of carrying out any conspiracy the said or any individuals organized under the laws of the State of New Jersey a corporation called the Amalgamated Copper Company, but admits that certain persons organized a corporation, known as the Amalgamated Copper Company, having powers as recited in its articles of incorporation, a part of which are stated in said amended bill of complaint. Denies

that it was intended by the said persons, who organized the same, that said corporation should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining or particularly in copper mining at or near the City of Butte as that it could control said corporations, and through the control of such corporations or otherwise regulate the supply or fix the price of copper in the markets or any market of the world or at any other place or in any other manner.

Admits that the said Amalgamated Copper Company was organized with a capital stock of 75,000,000.00, and that about or prior to the month of June, 1911, it acquired all of the stock of the Washoe Copper Company and all of the capital stock of the Big Blackfoot Milling Company, a lumber company engaged in manufacturing timber, a portion of which was used in the Butte mines; and admits that it acquired approximately 51% of the capital stock of the Anaconda Copper Mining Company, and approximately 51% of the capital stock of the Parrot Silver and Copper Mining Company; and denies that it acquired any of such capital stock in exchange for the capital stock of it, the Amalgamated Copper Company, but alleges that the said Amalgamated Copper Company acquired all of the said capital stock by outright purchase; and denies that the said Amalgamated Copper Company acquired any larger percentage of the Anaconda Copper Mining Company or of the Parrot

Silver and Copper Mining Company stock than is hereinabove stated; and denies that it at any time acquired any more than four-fifths of the capital stock of the Hennessy Mercantile Company, a trading company, engaged in general merchandise and dealing extensively with the men employed in the said and other mines at Butte, Montana, and alleges that long prior to the commencement of this action the said Amalgamated Copper Company sold and disposed of all its capital stock in said Hennessy Mercantile Company. Admits that on or about June 6, 1901, the capital stock of the Amalgamated Copper Company was increased to \$155,000,000.00, and that thereafter it acquired all but a few hundred shares of the stock of the said Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, and acquired all or practically of the stock of the above mentioned Colorado Mining and Smelting Company; but denies that any of such capital stock was acquired by issuing in exchange thereof its own stock, but alleges that the said stock was acquired by outright purchase. Admits that at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between said Boston and Montana Consolidated Silver Mining Company and the said Butte and Boston Consolidated Mining Company on the one side and the said F. Augustus Heinze and one or more of the said Heinze companies on

the other side, and that upon the acquisition by the said Amalgamated Copper Company of stock in the said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company as a stockholder interest in said litigant corporations; and admits that about the year 1899, and for several years thereafter, the greater portion of the companies in which said Amalgamated Copper Company was interested, doing business at or near the City of Butte, became and were also involved in litigation with the said Heinze interests, and admit that all the properties of certain of the said Heinze companies together with the properties of certain companies organized by Heinze after the organization of the said Amalgamated Copper Mining Company, among others, the Corra-Rock Island Mining Company passed to a corporation known as the Red Metal Mining Company with a capital stock of \$11,000,000.00 the purchase price of said properties being approximately \$10,500,000.00 and other valuable considerations, but deny that the said Red Metal Mining Company was organized by the Amalgamated Copper Company or by parties intimately associated with it, or that the acquisition of the said Heinze properties or any of them was made or carried out or accomplished in the pursuit of any purpose with which the said Amalgamated Copper Company was organized as set out in the

said amended bill of complaint, or otherwise, and denies that the acquisition of the said Heinze properties by the said Red Metal Mining Company had anything whatsoever to do in any manner with the Amalgamated Copper Company or its purposes.

Denies that prior to or since the year 1910, or at any other time, the said Amalgamated Copper Company had or has become the owner of practically all or any of the stock of the said Red Metal Mining Company, or had likewise or at all become the owner of a majority or any of the stock of various or any companies engaged in the business of mining or smelting copper or other ores in the State of Utah or elsewhere in the mining region in the western part of the United States, excepting its interests in the Butte corporations herein admitted and 50,000 shares of the capital stock of the Butte Coalition Mining Company, a corporation having issued capital stock of 1,000,000 shares of a par value of \$15.00 per share; and denies that the said Amalgamated Copper Company at any time became the owner of any of the capital stock of the International Smelting and Refining Company, the corporation referred to in the amended bill of complaint; and denies that any interests which have been acquired by the said Amalgamated Company in any corporation or company, or any interest whatsoever acquired by the said Amalgamated Copper Company have been so acquired with a view more completely or at all to carry out

any of the purposes set forth in the said amended bill of complaint except the carrying on of the lawful and legitimate purposes of its incorporation as specified in its articles of incorporation.

Admits that during the year 1910, it was deemed advisable by the managing officers and those directing the affairs of the Amalgamated Copper Company, and alleges that it was also deemed advisable by other stockholders in the Anaconda Copper Mining Company, that the defendant the Anaconda Copper Mining Company should become vested with the title to the properties of the various companies in which the Amalgamated Copper Company was a stockholder and which owned properties adjoining each other at Butte, Montana, but denies that such conclusion was taken or view reached with the same purpose or to carry out more effectually or at all any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or to carry out more effectually or otherwise any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or that it was deemed advisable or planned to have the said defendant Anaconda Copper Mining Company vested with the title to all mining properties located at or near said City of Butte which by development or operation might give rise to competition in the production or sale of copper or other metals found in association with it, or that might be a

potential or other competitor in the production or sale of copper or any other product, and alleges that possible competition or any question of competition as to copper produced in the Butte District did not enter into or have anything to do with any plan or purpose in connection with the acquisition by the Anaconda Copper Mining Company of any properties whatsoever; and this defendant alleges on the contrary that the sole reasons which led to the acquisition by the defendant Anaconda Copper Mining Company of the properties of the said corporations above specified were as hereinafter alleged.

The copper mines of the Butte district had been worked for many years, and in the prosecution of mining operations the said working had been extended to great depths into the earth, so that the cost of extracting the ore containing copper and other valuable metals was constantly increasing as was also the cost of keeping open the said workings and properly ventilating and draining the same.

Defendant further alleges, that up to the year 1910, all of said corporations referred to in said bill of complaint as the Amalgamated Companies had preserved their separate corporate organizations and were operated as independent mining concerns, each one possessing a separate and complete business organization, surface plants, shafts and equipment necessary to conducting operations as independent organizations. As a result

of this method of conducting operations, defendant alleges that the cost of producing copper was greatly in excess of what said cost would have been if all of said corporations were merged into a single organization and the operations and business of said corporation so conducted as to eliminate the maintenance of the necessary separate organizations, plants and equipment with the attendant multiplication of different items of cost without the accomplishment of any useful or economic purpose. Defendant also further alleges, that on account of the increased underground temperature and the encountering of additional amounts of underground water, the ventilation and drainage of said mines became an exceedingly complex and expensive undertaking, and in order to properly carry out said ventilation and said drainage it became necessary that some uniform system should be adopted under which it would be possible to drain and ventilate the entire underground mining area of the Butte district.

Defendant further alleges that all of the producing mines of said corporations are located within a comparatively small area in ^{the} Butte district; that the properties of the several corporations above referred to consist of many small and irregularly shaped mining claims; that the properties of the different corporations were contiguous to or adjacent to one another, so that in many cases the surface lines of the mining properties belonging to one corporation overlapped at vary-

ing angles the surface properties belonging to other corporations. That at increased depth in the mining operations new ore bodies were encountered having no tops or apices near the surface of the ground, and that it was impossible to fix with any degree of certainty, or without the doing of an enormous amount of development work, involving the expenditure of very large sums of money with no practical return therefrom, the title to the ownership of such underground ore bodies, and that as a result of the foregoing it became a matter of practical necessity that the titles to said underground ore bodies should be so unified that the necessity of determining the extra-lateral rights incident to the ownership of each individual mining claim could be eliminated. That the necessities arising out of the foregoing situation were of such a character that they impelled the different corporations above specified to take up the matter of unifying the titles to the principal producing properties of the Butte District, and as a result therefrom and of the negotiations which were conducted for the purpose of accomplishing the unification of said titles, it resulted that in the year 1910 as aforesaid all of the foregoing above mentioned corporations conveyed the title to all of their physical properties to the Anaconda Copper Mining Company.

Defendant further alleges that some of the properties which the said Anaconda Copper Mining Company acquired by reason of the foregoing

state of facts are adjacent to some of the mining claims formerly owned by the Alice Company. That it was the purpose of the said Anaconda Copper Mining Company to carry on extensive development work for the purpose of endeavoring to ascertain the location of and develop ore bodies which might lie beneath the surface of the undeveloped property so acquired by it, and that having the foregoing purpose in mind although the said Alice Company had long ceased to be a producing company, and although the said defendant the said Anaconda Copper Mining Company, nor any of its officers, directors or agents had nor have they now, any knowledge whatsoever of the existence of any valuable ore bodies within the limits of the property owned by the said Alice Company, or belonging to it, as a speculative proposition it was deemed advisable to make an offer to the said Alice Company to purchase its properties. That as a result of the negotiations so conducted the said Anaconda Copper Mining Company offered to exchange for the title to all of the property of the said Alice Company 30,000 shares of the capital stock of the said Anaconda Copper Mining Company.

The defendant Anaconda Copper Mining Company further alleges that the value of the said 30,000 shares of its said capital stock was and is largely in excess of any known value possessed by the said property of the said Alice Company, and that the value of said stock was largely in ex-

cess of the amount which any other or independent purchaser would be justified in paying for said property, and that only because of the reason that the said Anaconda Copper Mining Company owned mining property in the vicinity of and adjacent to the said property of the said Alice Company, and was in the possession of underground workings from which explorations might be economically conducted for the purpose of ascertaining the values, if any, possessed by the said property of the said Alice Company, was the said Anaconda Copper Mining Company justified in paying so large a price as was paid for said property.

This defendant further alleges that in so far as the stockholders of the said Alice Gold and Silver Mining Company are concerned the transaction was of great benefit to them and the price paid was largely in excess of what could have been realized by the said Alice Company from any other source or for any other purpose. Admits that in the year 1910, the defendant Anaconda Copper Mining Company purchased certain of the properties of the corporations designated in the bill of complaint as the Clark companies, but denies that such properties so purchased included all of the properties of the before mentioned Clark companies save some small or comparatively undeveloped tracts yielding zinc and copper only in insignificant amounts, and allege that there are certain mining properties which were retained by said Clark interests, and which did not pass by said

sale, which are valuable and are now comparatively large producers of zinc and copper in the Butte district. Denies that the said Anaconda Copper Mining Company paid for the said Clark properties the sum of \$12,000,000.00 or any other or greater sum than \$5,000,000.00, and denies that the purchase of said Clark properties was in connection with or had anything to do with the acquisition by the Anaconda Copper Mining Company of the properties of the various companies in which the Amalgamated Copper Company was interested or the property of the Red Metal Mining Company or the properties of the Alice Gold and Silver Mining Company; and alleges that the purchase of said Clark properties was not planned or contemplated or consummated at the time the proceedings were instituted to vest the other properties above referred to in the said Anaconda Copper Mining Company. Admits that the capital stock of the Anaconda Copper Mining Company was increased in the month of March, 1910, from \$30,000,000.00 to \$150,000,000.00, but denies that said stock was so increased, or increased at all with a view to purchasing the said properties of the Clark companies or to carrying out any purpose in connection with such purchase. Admits that all of the properties of the said Boston and Montana Consolidated Silver Mining Company, Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Development Company, the successor in

interest of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Copper Mining Company and the Red Metal Mining Company were by those corporations transferred to the said Anaconda Copper Mining Company, and admits in each instance, that the said Anaconda Copper Mining Company paid for the said property so acquired by it with its own stock issued in payment pursuant to resolutions adopted at meetings of stockholders of the said selling companies, respectively. Denies that by such purchase the Anaconda Copper Mining Company became the owner of practically all of the mines at or near the City of Butte producing copper, save those of the North Butte Mining Company; and admits that the Anaconda Copper Mining Company by such purchase became the owner of two copper smelters operating in the State of Montana, one of which had been owned by the Washoe Copper Company and the other by the Boston and Montana Consolidated Copper and Silver Mining Company, and alleges that there were at said times two other copper smelters operating in the State of Montana. Denies that the said Amalgamated Copper Company caused the properties of the said corporations or any of them to be so transferred to the Anaconda Copper Mining Company, but admits that the said Amalgamated Copper Company as a stockholder in each of said corporations in which it held stock together with other stockholders voted in favor of such

transfers at the meetings authorizing such transfers held in pursuance of the law; denies that prior to the year 1910, or at any other time, the said Amalgamated Copper Company, or any of the persons managing or directing its affairs, except the defendant John D. Ryan, acting as hereinafter stated, with any purpose whatsoever, or with any view whatsoever, or otherwise or at all, caused to be acquired by a corporation known as the Butte Coalition Company or otherwise, a majority of the stock of the defendant Alice Gold and Silver Mining Company; and defendant alleges that the defendant John D. Ryan, personally and for himself alone, and not as the representative of any corporation or person whatsoever, was in the year, 1906, interested in an option, given by stockholders of the Alice Company upon stock held by them, which option was afterwards turned over to the said Butte Coalition Mining Company, or persons representing or acting for it; and denies that the Butte Coalition Company was organized by the said Amalgamated Copper Company or the said parties managing or directing its affairs or of the stock of which it or they at all or any time since its organization held or owned a majority or a controlling interest, or any of them. Admits that prior to the year 1910, the Butte Coalition Company had acquired a majority interest, to-wit, approximately 234,000 shares of the capital stock of the defendant Alice Gold and Silver Mining Company, which stood in the names of certain of the

officers and representatives of said Butte Coalition Company. Denies that the Amalgamated Copper Company or the Anaconda Copper Mining Company, or either of them, had or has at any time controlled or dominated the business or affairs of the said Alice Gold and Silver Mining Company or through their or any of their servants, agents or representatives have elected boards or a board of directors or any directors of the said Alice Gold and Silver Mining Company, or through such board of directors or otherwise, except as hereinafter stated, have been in possession for more than two years last past or any other period of all or any of the mining properties of the said defendant Alice Gold and Silver Mining Company, and denies that said or any properties of the said Alice Gold and Silver Mining Company are, so far as defendants have any knowledge or information, rich in ores of zinc or copper or gold or silver or any other metal. Admits that since the purchase by and conveyance to the Anaconda Copper Mining Company of the properties of the Alice Gold and Silver Mining Company on the 31st day of May, 1910, the defendant Anaconda Copper Mining Company, has been in possession of the properties formerly owned by the said Alice Gold and Silver Mining Company.

This defendant alleges that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company has ever been the owner or holder of any stock in the said Alice Gold and Sil-

ver Mining Company, excepting that subsequent to the 20th day of December, 1911, the Amalgamated Copper Company acquired certain of the stock of the said Alice Gold and Silver Mining Company under the circumstances, as follows, viz: It was the original plan of the stockholders and officers of the said Alice Gold and Silver Mining Company in the event of a transfer by said Alice Company of all of its properties to the Anaconda Copper Mining Company to dissolve by proceedings taken in accordance with the laws of the State of Utah, the said Alice Gold and Silver Mining Company, and to distribute its assets, to-wit, the said Thirty Thousand shares of stock of the Anaconda Copper Mining Company, among the stockholders of the said Alice Company, as there would have remained no reason for maintaining the organization of said Alice Company, and at a stockholders' meeting of said Alice Company duly called and held such dissolution was voted by the holders of a very large majority, to-wit, practically three-fourths of the capital stock of said Alice Company, and in accordance therewith proceedings were instituted in the courts of Salt Lake County, Utah to obtain a decree of dissolution. Some of the complainants in this action appeared in that proceeding and objected to the dissolution of the company and subsequently filed this action, and in this action applied for an injunction pendente lite to prevent the distribution by the Alice Company of the shares of the stock of the Anaconda Copper

Mining Company held by it. While this suit and such application for a temporary injunction therein were pending, numerous shareholders of the Alice Company became anxious to have divided among the stockholders of the Alice Company the capital stock of the Anaconda Copper Mining Company to which each of said stockholders should be entitled, and numerous inquiries and importunities were received by the officers of said Alice Company to this end. For the purpose of accommodating such stockholders, on or about December 20, 1911, the said Amalgamated Copper Company proposed to the stockholders of the Alice Gold and Silver Mining Company that it, the Amalgamated Copper Company, would procure capital stock of the said Anaconda Copper Mining Company and exchange such Anaconda Copper Mining Company stock for the stock of the Alice Gold and Silver Mining Company, upon the same basis that the said Anaconda Company stock held by said Alice Company would be by law distributed among its shareholders in case of a legal dissolution, that is, giving to each Alice Company shareholder his proportionate share of the assets of the said Alice Company. Thereafter stockholders owing stock in the said Alice Gold and Silver Mining Company to the number of 353,446 shares, which included the Butte Coalition Mining Company, as the owner of 234,215 shares of such Alice Company stock, availed themselves of this offer, and exchanged with said Amalgamated Cop-

per Company 353,446 shares of the capital stock of the Alice Gold and Silver Mining Company for shares of stock of the said Anaconda Company, and the said Amalgamated Copper Company thus became and is now the owner and holder of 353,446 shares of the capital stock of the said Alice Gold and Silver Mining Company, and the same and the whole thereof was acquired by the said Amalgamated Copper Company in the manner and for the purposes above stated and for no other purpose.

Admits that prior to the 27th day of May, 1912, the directors of the said Alice Gold and Silver Mining Company caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the City of Salt Lake on the 27th day of May, 1910, for the purpose of considering and ratifying the action of the Board of Directors in adopting a resolution and contract providing for the transfer of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company. Denies that the said directors in calling such meeting or in anything in connection therewith acted under the direction of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or any of the officers thereof or any of the parties directing the business or operation of either of the said companies; and denies that

said meeting was called or the notice thereof given pursuant to any purpose of said Amalgamated Copper Company or of any of the parties directing its affairs as set forth in said amended bill of complaint, but admits that said meeting was called in connection with the proposition theretofore made by the Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company to purchase its properties for the said consideration aforesaid.

Admits that pursuant to the notice and call, a meeting of the stockholders of the said Alice Gold and Silver Mining Company was held at the office of said company in the City of Salt Lake on the 27th day of May, 1910. Denies that at such meeting there was represented stock to the number of 310,963 shares or any greater number than 295,100 shares of the total of 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company; and denies that 287,000 or any other number of the shares of said Alice Gold and Silver Mining Company represented at said meeting were owned by the said Amalgamated Copper Company or the said Anaconda Copper Mining Company, or anyone representing them or either of them. Denies that all or any of the stock which was voted at the said meeting was voted by one E. S. Ferry and one L. O. Evans, but admit that a great portion of said stock was voted by one E. S. Ferry and other persons representing the said stockholders as proxies; denies that the said E. S.

Ferry was at said time or has at any time been an attorney or employee of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company. Admits that 234,215 shares of the total of 295,100 shares of stock represented at said meeting were owned by the said Coalition Mining Company and were voted by proxies given by the persons in whose names the said stock stood upon the books of said Alice Gold and Silver Mining Company.

Admits and alleges that at the said stockholders' meeting, so called and held, a resolution was presented and adopted, confirming and ratifying the previous action of the Board of Directors in authorizing and entering into a contract for the transfer of, and authorizing the transfer of all of the property of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said latter company, but denies that said resolution was presented by the said L. O. Evans or that the said L. O. Evans was present at said meeting.

Admits that the said resolution was carried at said meeting, but denies that the same was carried by a vote of 298,598 shares for or 13,385 shares against the same, but alleges that the said resolution was carried by a vote of 289,590 shares for and 5,510 shares voting against the same. Admits that the said E. S. Ferry and certain other persons voted all of the shares

for which they had proxies in favor of the said resolution, and admits that all of the complainants who were present or represented at the meeting voted against the same, but denies that the said L. O. Evans voted any shares at said meeting in any capacity whatsoever, and denies that any of the orators or complainants herein protested at said meeting against the resolution for the transfer of said properties except by such protest as was shown by the voting of those present or represented at said meeting against the said resolution, the said complainants so present or represented being as follows: Joseph S. Baer in person; J. R. Walker in person; Peter Geddes by J. R. Walker, his proxy. Denies that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not at the time the said meeting was called or have not since been at any time worth more than \$1,020,000.00; and denies that the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or all or any of the parties concerned in the effort to procure the transfer of the properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all or any times, well or at all knew that the said 30,000 shares of stock were not at said time or have not since been worth more than \$1,020,000.00. And defendant alleges the fact to be that the said 30,000 shares of stock at and for sometime prior to said date were of the value of \$1,500,000.00 and at

various times since said date have been worth and have had an actual market value of approximately the sum of \$1,500,000.00. Denies that the properties of the said defendant Alice Gold and Silver Mining Company have at all or any of said times been worth upwards of \$15,000,000.00 or upwards of any sum in excess of \$1,000,000.00, or that any of said corporations or persons mentioned in said bill of complaint well or at all knew of any such value; and defendant alleges the facts to be that the complainants and all other shareholders and all of the directors of the said Alice Gold and Silver Mining Company had full knowledge and means of knowledge available to them as to the value of the properties of the said Alice Gold and Silver Mining Company, and that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company nor any of their officers or representatives, nor any of the defendants in this action, had any information or knowledge or source of information or knowledge regarding the properties of the Alice Gold and Silver Mining Company or their value, which was not possessed by the said Alice Gold and Silver Mining Company and its stockholders and officers, or which was not fully shown by the books, records and papers of the said Alice Gold and Silver Mining Company, all of which were at all times available to all of the stockholders, officers and representatives of said Alice Gold and Silver Mining Company, and that every reason for the purchase of the properties of

the said Alice Gold and Silver Mining Company and the sale thereof by said latter company was communicated to and fully known by each and all of the stockholders and officers of the said Alice Gold and Silver Mining Company. Admits that acting under the authority of the said resolution so adopted at the stockholder's meeting and its own action, the Board of Directors of the said Alice Gold and Silver Mining Company directed the officers of the said company to carry out the said resolution and to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company, and denies that in so doing or in taking any other acts any of the directors of the said Alice Gold and Silver Mining Company acted under the direction of the Amalgamated Copper Company or the said Anaconda Copper Mining Company or their or either of their officers or representatives. Admits that acting under the authority of the said resolutions of the stockholder's meetings, and of the said Board of Directors, on the 31st day of May, 1910, the defendant John D. Ryan, as the President of the said Alice Gold and Silver Mining Company, and J. W. Allen, its Secretary, in the name of the said Alice Gold and Silver Mining Company, executed a deed of all the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which

said deed was on the 24th day of June, 1910, recorded in the office of the County Clerk and Recorder of the County of Silver Bow, State of Montana, where said property is situated, and alleges that the said deed was so made, executed and delivered in pursuance of the authority in and direction to the said officers from the stockholders and Board of Directors of said Alice Company, and was ^{so} made ^{executed} and delivered in consideration of the said Thirty Thousand shares of stock of the said Anaconda Copper Mining Company, which were at the time of such transfer duly delivered to the said Alice Gold and Silver Mining Company, which ever since has been and now is the owner and possessor thereof. Admits that the said John D. Ryan, who executed the said deed in behalf of the said Alice Gold and Silver Mining Company as the President thereof is, and at the time of the execution thereof was also the President of the Amalgamated Copper Company and a member of the Board of Directors thereof, and is and was at the time of the execution of the said deed a member of the Board of Directors of the Anaconda Copper Mining Company, and was at said time with the other officers of the said Anaconda Copper Mining Company intrusted with the immediate direction of its affairs at and about the City of Butte; but denies that the Amalgamated Copper Company had at said time, or has had at any time since, any affairs or business at or about the City of Butte, excepting the voting of its stock at stock-

holder's meetings of the companies in which it is and was a stockholder.

Denies that the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, or any or either of them, are or is, or have or has, at any time, been the servant or servants, employee or employees of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or either of them or of anyone or more of the corporations controlled by the said Amalgamated Copper Company, and denies that the said defendants in any or all of the things done by them as set forth in said amended bill of complaint or otherwise acted under the direction or pursuant to any instruction received from the said Amalgamated Copper Company or anyone acting in its behalf.

Admits that after the transfer of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, there were instituted proceedings in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending and being resisted by certain of the complainants herein, but deny that said proceedings were instituted or caused to be instituted by the said defendant Anaconda Copper Mining Company or the said Amalgamated Copper Company or any company or person whatsoever controlling or directing the

affairs of both or either of the said companies, and alleges that the said proceedings were instituted in pursuance to resolution duly adopted at stockholders' and directors' meetings of the said Alice Gold and Silver Mining Company, called and held pursuant to the laws of the State of Utah and the by-laws of said corporation, and alleges that it was the object and purpose of the stockholders and officers of said Alice Gold and Silver Mining Company who favored the sale of its property to the Anaconda Copper Mining Company as aforesaid, from the time that they first contemplated such sale, to submit to the stockholders and officers of said Alice Gold and Silver Mining Company a proposition to dissolve the said company by proceedings in conformity with the laws of the State of Utah, in case the said properties should be so sold.

Admits that the United Metals Selling Company is a corporation organized in or about the year 1900 with a capital stock of \$5,000,000.00, for the purpose of doing a general brokerage and commission business in metals and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company, it has acted as selling agent for certain of the producing companies, a majority or more of whose stock was held by the Amalgamated Copper Company, under an arrangement entered into between it, the said United Metals Selling Company, and the said companies or corporations producing the said

copper; and admits upon information and belief that the said United Metals Selling Company had become by the month of March, 1911, the largest copper broker in the world, but admits that the said United Metals Selling Company has acted as selling agent for all of the producing companies controlled by or in which the said Amalgamated Copper Company was or is a stockholder, and denies that during the year 1910, the said United Metals Selling Company marketed upwards of 500,000,000 pounds of copper or any other amount of copper in excess of 426,000,000 pounds.

Admits that on or about the month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said United Metals Selling Company of which the said John D. Ryan has become the president, and admits that as such stockholder the said Amalgamated Copper Company controls the sale of the copper product of the mines of the said Anaconda Copper Mining Company, and has so done since the transfers hereinbefore set forth, but denies that the Amalgamated Copper Company controls any other mining companies or companies producing copper or other metals other than the said Anaconda Copper Mining Company, but denies that the said United Metals Selling Company, or the Amalgamated Copper Company through said United Metals Selling Company or otherwise controls or sells the product of most of the producing mines of the United States, but admits that said

United Metals Selling Company sells and markets the copper produced by other mining companies and operators than the said Anaconda Copper Mining Company.

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether this suit is not a collusive one to confer upon a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

Defendant further denies each and every allegation and each and every part thereof in the said amended bill of complaint contained not hereinbefore fully and specifically admitted or denied.

Wherefore, this defendant having fully answered, confessed, traversed, avoided or denied all the matters in said amended bill of complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

ANACONDA COPPER MINING CO.

[Seal] By C. F. KELLEY, Its Vice President.
C. F. KELLY, L. O. EVANS,
W. B. RODGERS and D. GAY STIVERS,
Its Attorneys and Counsel, 616 Hennessy Bldg.,
Butte, Mont.

Due and personal service of the foregoing answer, and receipt of a copy thereof is admitted and acknowledged this 7th day of March, 1913.

WALSH & NOLAN,

Solicitors and of Counsel for Complainants.

Filed March 7, 1913. Geo. W. Sproule, Clerk.

Thereafter, on March 7th, 1913, the answer of defendant Alice Gold and Silver Mining Company, to the amended bill, was duly filed herein, in the words and figures following, to-wit:

[Same title of Court and Cause.]

Answer of Defendant, Alice Gold and Silver Mining Company, a Corporation, to the Amended Bill of Complaint.

This defendant, Alice Gold and Silver Mining Company, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended bill of complaint herein, comes and answers thereto, or to so much thereof as it is advised is material to be answered, and says:

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether the complainants Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, or either of them, are or were co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, or otherwise, and therefore asks that Complainants be required to produce proof of the said allegations.

Admits that the defendant Alice Gold and Sil-

ver Mining Company is a corporation which was organized under the laws of the territory of Utah on or about the 6th day of March, 1880, with powers and for the purposes set forth in its articles of incorporation, among said purposes and powers being those specified in said amended bill of complaint on page 2 thereof.

Admits that the defendant Anaconda Copper Mining Company is a corporation organized under the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation, among such purposes being those specified in the amended bill of complaint herein.

Admits that complainants Peter Geddes, Margaret Ann Meehan, Eugene Blum, Edward Blum, Alphons Dreyfoos, Dreyfoss, Blum & Company, Leopold Freund and Alice Frey are, and for more than two years last past have been the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company, as alleged in said amended bill of complaint.

Admits that the complainant Joseph R. Walker was on May 27, 1910, and ever since has been the owner of 360 shares, the complainant Joseph S. Baer, on May 27, 1910, was the owner of 300 shares and is now the owner of 400 shares, the complainant Henry S. Everett on May 27, 1910, was the owner of 400 shares, and is now the owner of 900 shares, the complainant Isaac Blum on May 27, 1910, was the owner of 1400 shares, and is now the owner of 1600 shares; that the complainant

Isador Baer is now the owner of 200 shares, but denies that on the 27th day of May, 1910, he was the owner of any shares whatsoever of the capital stock of the said Alice Gold and Silver Mining Company; and denies each and every allegation and each ~~each~~ and every part thereof in said amended bill of complaint contained concerning the ownership by orators or complainants or any of them or shares of the capital stock of the said Alice Gold and Silver Mining Company except as hereinabove admitted.

Admits that prior to the granting and conveying of all of its property to the defendant Anaconda Copper Mining Company on the 31st day of May, 1910, the said Alice Gold and Silver Mining Company was and had been for many years prior thereto, the owner of extensive mining ground situate in the County of Silver Bow, State of Montana, and of improvements thereon and of certain property used in connection therewith; denies that the same aggregated about 340 acres or any greater number of acres than 145; and denies that during the period of more than ten years last past the said corporation has been engaged in the prosecution of any business of mining or reducing ore or selling or disposing of the materials extracted therefrom or other products except on a very inconsequential scale; denies that the property or any property of the said corporation is now or at any time has been of the value of \$15,000,000.00, or that the same is now or at any time has been of

a value of more than \$1,000,000.00, and alleges that the value of the property of the said Alice Company is now and for more than ten years last past has been of an almost wholly speculative character; admits that the said mining claims of the said Alice Company have been extensively worked and ores of large value taken therefrom; denies that said claims are within the rich mineral region in or adjacent to the City of Butte, Silver Bow County, State of Montana, and alleges that so far as is shown by any development made to the present time and so far as is at present known the said claims are without the rich mineral region lying in and about the City of Butte.

And this defendant alleges the facts to be that the said Alice Gold and Silver Mining Company was incorporated in the year 1880 with a capital stock consisting of 400,000 shares of the par value of \$25.00 per share. That all or all but a very few shares of the capital stock of the said corporation were issued in payment for the mining claims acquired by it. That soon after its incorporation, mining operations were commenced by said Alice Company upon its said mining claims and quantities of ore bearing silver and gold, their value being mainly in the silver contained therein, were extracted. That mining operations were conducted by said company on a somewhat extensive scale, but as the said ore bodies were mined out and the workings attained depth, the values of the ore became gradually less and the ores became

very refractory and base and difficult and expensive of reduction, and that about the year 1893 the price of silver became very much less, so that it became impossible to work or mine the said properties at a profit, and that the total proceeds derived by said Alice Company from its mining operations and paid to its stockholders as dividends or available as dividends has been during the whole period of its existence less than \$1,100,000.00. That the mining operations of said company conducted since the year 1897 have resulted in a loss to said company. In the early history of said Alice Company, it owned and operated a large stamp mill for the reduction of its ores, but that in later years as the said ores became base and refractory and of low grade, the said mill became useless and prior to the year 1907, was destroyed by fire. That the machinery and other equipment used in and about said Alice mines in operating the same became more or less worn out and obsolete, and was inadequate to operate the said properties at the depths to which the workings had been carried, so that on May 27, 1910, and for some period prior thereto the assets of the said Alice Company in the way of improvements, machinery or other property used in connection with its mining claims were of very small value. That the said mining claims formerly owned by the said Alice Company have not now and have not had for a period of more than ten years last past any ores or ore bodies developed or showing

of any commercial value, the same being of such low grade and value and of such a base and refractory character that they could not be profitably worked under any known process. Of the property formerly owned by said Alice Company, there is a considerable portion of the same which is undeveloped and which may develop ore bodies of value, but that to develop the same, so as to make available any ore bodies which may be contained within them, it will be necessary to conduct developments on a very extensive scale and to very great depths, necessitating the expenditure of large sums of money, probably aggregating many hundreds of thousand of dollars. That on May 27, 1910, the said Alice Company, because of the unprofitable character of its operations for a number of years, had no funds, and had incurred indebtedness in the necessary care and maintenance of its property, and that said indebtedness on the 27th day of May, 1910, was in excess of the sum of \$35,000.00, to meet which the said Alice Company had no funds or assets except its mining claims.

Admits that prior to the year 1899, there were a number of independant companies engaged in mining at the City of Butte and in extracting the ores from claims within the mining region in and about the City of Butte and in reducing the same and in selling and disposing of the minerals extracted from the same, the greater portion of which were by the said companies transported

from the City of Butte, in the State of Montana, to the City of New York, and other markets in the eastern states and beyond the State of Montana, where the same were by the said companies sold and disposed of, and that among other companies so engaged in such business were the defendants Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company, the Washoe Copper Company, the Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Parrott Silver and Copper Mining Company, the Colorado Mining and Smelting Company, a group of companies known collectively as the Heinze companies, by reason of the fact that one F. Augustus Heinze was the chief factor therein, including the Montana Ore Purchasing Company, Johnstown Mining Company, Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark corporations, owing to the fact that one W. A. Clark was the chief factor in said companies, being composed of the Colusa Parrot Mining and Smelting Company and the Original Mining Company; and denies that all of the said corporations were at any time competing with each other in the sale of the products of the mines so owned and operated by them as aforesaid in the said markets within the United States or beyond the State of Montana, where said products were by such com-

panies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save also that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company; and denies that the stock of said last named companies was held practically by the same persons, and defendant alleges the fact to be that the operations of the said Alice Company in and for several years prior to the year 1899 had been on a small scale, and that the only products of value at any time produced by the said Alice Company consisted of silver and gold and that no copper was ever produced or marketed from the mines of the said Alice Company. That none of the said corporations above named ever sold its copper or other products directly to the consumer, but that during all of the years prior to 1899, as well as since, because of the fact that it has always been the custom in the copper trade for sales of copper to be made subject to delivery at any place in the world designated by the purchaser, it has been necessary that the sale thereof be handled by large concerns, and that the copper and other products of said mining companies have always been disposed of by being consigned to one or more of the large selling agencies maintained and conducted in the United States.

Admits that in the year 1899, and at all times since, a large share of the copper produced in the

world, and a still larger portion of that produced in the United States was and still is produced within the State of Montana from ores mined within the said mining region at and near the City of Butte; and alleges that the proportionate amount of the copper produced in the United States and in the world produced in the said Butte mining region has been growing less each year since the year 1899, and that in the years 1910 and 1911, the Butte mines produced about 23% of the copper produced within the United States, and about 13% of the world's production; deny that during all or any of the times either since or prior to the year 1899, any individual or corporation or association that could control such corporations, or any of them, as produced the greater or any portion or all of the mineral output of the City of Butte or vicinity could by reason of such fact or otherwise or at all control the supply of copper available for use in the several states of the union or elsewhere, or could fix or regulate the price of that commodity or of any commodity or metal in the markets of the union or in any market or state whatsoever.

Denies that in the year 1899, or at any other time certain or any individuals or individual, with a view to controlling in any way the production of copper or the supply thereof or to fix or regulate the price thereof in any market or at any place whatsoever, or to suppress competition in the sale thereof, or particularly or at all of the products of any of the mines at or near the City of Butte when

the same should be transported for sale to any market in the eastern states or elsewhere, or at any time or under any conditions whatsoever or with any view or purpose whatsoever, entered into any conspiracy in restraint of trade or commerce among the several or any states or otherwise or at all; and deny that for any of the purposes aforesaid or for the purpose of carrying out any conspiracy the said or any individuals organized under the laws of the State of New Jersey a corporation called the Amalgamated Copper Company; but admits that certain persons organized a corporation, known as the Amalgamated Copper Company; having powers as recited in its articles of incorporation, a part of which are stated in said amended bill of complaint. Denies that it was intended by the said persons, who organized the same, that said corporation should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining or particularly in copper mining at or near the City of Butte as that it could control said corporations, and through the control of such corporations or otherwise regulate the supply or fix the price of copper in the markets or any market of the world or at any other place or in any other manner.

Admits that the said Amalgamated Copper Company was organized with a capital stock of \$75,000,000.00, and that about or prior to the month of June, 1901, it acquired all of the stock of the Washoe Copper Company and all of the capital

stock of the Big Blackfoot Milling Company, a lumber company engaged in manufacturing timber, a portion of which was used in the Butte mines; and admits that it acquired approximately 51% of the capital stock of the Anaconda Copper Mining Company, and approximately 51% of the capital stock of the Parrot Silver and Copper Mining Company; and denies that it acquired any of such capital stock in exchange for the capital stock of it, the Amalgamated Copper Company, but alleges that the said Amalgamated Copper Company acquired all of the said capital stock by outright purchase; and denies that the said Amalgamated Copper Company acquired any larger percentage of the Anaconda Copper Mining Company or of the Parrot Silver and Copper Mining Company stock than is hereinabove stated; and denies that it at any time acquired any more than 4-5 of the capital stock of the Hennessy Mercantile Company, a trading company, engaged in general merchandise and dealing extensively with the men employed in the said and other mines at Butte, Montana, and alleges that long prior to the commencement of this action, the said Amalgamated Copper Company sold and disposed of all its capital stock in said Hennessy Mercantile Company. Admits that on or about June 6, 1901, the capital stock of the Amalgamated Copper Company was increased to \$155,000,000.00, and that thereafter it acquired all but a few hundred shares of the stock of the said Boston and Montana Consolidated Copper and Sil-

ver Mining Company and the Butte and Boston Consolidated Mining Company, and acquired all or practically all of the stock of the above mentioned Colorado Mining and Smelting Company; but denies that any of such capital stock was acquired by issuing in exchange thereof its own stock, but alleges that the said stock was acquired by outright purchase. Admits that at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between said Boston and Montana Consolidated Silver Mining Company and the said Butte and Boston Consolidated Mining Company on the one side and the said F. Augustus Heinze and one or more of the said Heinze companies on the other side, and that upon the acquisition by the said Amalgamated Copper Company of stock of said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company as a stockholder interested in said litigant corporations; and admits that about the year 1899, and for several years thereafter, the greater portion of the companies in which said Amalgamated Copper Company was interested, doing business at or near the City of Butte became and were also involved in litigation with the said Heinze interests, and admit that all the properties of certain of the said

Heinze companies together with the properties of certain companies organized by Heinze after the organization of the said Amalgamated Copper Company, among others, the Carro-Rock Island Mining Company, passed to a corporation known as the Red ~~Betal~~ ^{Metal} Mining Company with a capital stock of \$11,000,000.00, the purchase price of said properties being approximately \$10,500,000.00 and other valuable considerations, but denies that the said Red Metal Mining Company was organized by the Amalgamated Copper Company or by parties intimately associated with it, or that the acquisition of the said Heinze properties or any of them was made or carried out or accomplished in the pursuit of any purpose with which the said Amalgamated Copper Company was organized as set out in the said amended bill of complaint, or otherwise, and denies that the acquisition of the said Heinze properties by the said Red Metal Mining Company had anything whatsoever to do in any manner with the Amalgamated Copper Company or its purposes.

Denies that prior or since the year 1910, or at any other time, the said Amalgamated Copper Company had or has become the owner of practically all or any of the stock of the said Red Metal Mining Company, or had likewise or at all become the owner of a majority or any of the stock of various or any companies engaged in the business of mining or smelting copper or other ores in the State of Utah or elsewhere in the mining region in

the western part of the United States, excepting its interests in the Butte corporations herein admitted, and 50,000 shares of the capital stock of the Butte Coalition Mining Company, a corporation having issued capital stock of 1,000,000 shares of a par value of \$15.00 per share; and denies that the said Amalgamated Copper Company at any time became the owner of any of the capital stock of the International Smelting and Refining Company, ^{the} a corporation referred to in the amended bill of complaint; and denies that any interests which have been acquired by the said Amalgamated Company in any corporation or company, or any interest whatsoever acquired by the said Amalgamated Copper Company have been so acquired with a view more completely or at all to carry out any of the purposes set forth in the said amended bill of complaint except the carrying on of the lawful and legitimate purposes of its incorporation as specified in its articles of incorporation.

Admits that during the year 1910, it was deemed advisable by the managing officers and those directing the affairs of the Amalgamated Copper Company, and alleges that it was also deemed advisable by other stockholders in the Anaconda Copper Mining Company, that the defendant the Anaconda Copper Mining Company should be come vested with the title to the properties of the various companies in which the Amalgamated Copper Company was a stockholder and which

owned properties adjoining each other at Butte, Montana, but denies that such conclusion was taken or view reached with the same purpose or to carry out more effectually or at all, any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or to carry out more effectually or otherwise any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or that it was deemed advisable or planned to have the said defendant Anaconda Copper Mining Company vested with the title to all mining properties located at or near said City of Butte which by development or operation might give rise to competition in the production or sale of copper or other metals found in association with it, or that might be a potential or other competitor in the production or sale of copper or any other product, and alleges that possible competition or any question of competition as to copper produced in the Butte District did not enter into or have anything to do with any plan or purpose in connection with the acquisition by the Anaconda Copper Mining Company of any properties whatsoever.

And this defendant alleges on the contrary that the sole reasons which led to the acquisition by the defendant Anaconda Copper Mining Company of the properties of the said corporations above specified were, as hereinafter alleged.

The copper mines of the Butte district had been

worked for many years, and in the prosecution of mining operations the said workings had been extended to great depths into the earth so that the cost of extracting the ore containing copper and other valuable metals was constantly increasing as was also the cost of keeping open the said workings and properly ventilating and draining the same.

Defendant further alleges, that up to the year 1910, all of said corporations referred to in said bill of complaint as the Amalgamated Companies had preserved their separate corporate organizations and were operated as independent mining concerns, each one possessing a separate and complete business organization, surface plants, shafts and equipment necessary to conducting operations as independent organizations. As a result of this method of conducting operations, defendant alleges that the cost of producing copper was greatly in excess of what said cost would have been if all of said corporations were merged into a single organization and the operations and business of said corporation so conducted as to eliminate the maintenance of the necessary, separate organization plants and equipment with the attendant multiplication of different items of cost without the accomplishment of any useful or economic purpose. Defendant also further alleges, that on account of the increased underground temperature and the encountering of additional amounts of underground water, the ventila-

tion and drainage of said mines became an exceedingly complex and expensive undertaking and in order to properly carry out said ventilation and said drainage it became necessary that some uniform system should be adopted under which it would be possible to drain and ventilate the entire underground mining area of the Butte district.

Defendant further alleges that all of the producing mines of said corporations are located within a comparatively small area in the Butte District; that the properties of the several corporations above referred to consist of many small and irregularly shaped mining claims; that the properties of the different corporations were contiguous to or adjacent to one another, so that in many cases the surface lines of the mining properties belonging to one corporation overlapped at varying angles the surface properties belonging to other corporations. That at increased depth in the mining operations new ore bodies were encountered having no tops or apices near the surface of the ground, and that it was impossible to fix with any degree of certainty, or without the doing of an enormous amount of development work, involving the expenditure of very large sums of money with no practical return therefrom, the title to the ownership of such underground ore bodies, and that as a result of the foregoing it became a matter of practical necessity that the titles to said underground ore bodies should be so unified that the

necessity of determining the extralateral rights incident to the ownership of each individual mining claim could be eliminated. That the necessities arising out of the foregoing situation were of such a character that they impelled the different corporations above specified to take up the matter of unifying the titles to the principal producing properties of the Butte District, and as a result therefrom and of the negotiations which were conducted for the purpose of accomplishing the unification of said titles, it resulted that in the year 1910 as aforesaid all of the foregoing above mentioned corporations conveyed the title to all of their physical properties to the Anaconda Copper Mining Company.

Defendant further alleges that some of the properties which the said Anaconda Copper Mining Company acquired by reason of the foregoing state of facts are adjacent to some of the mining claims formerly owned by the Alice Company. That it was the purpose of the said Anaconda Copper Mining Company to carry on extensive development work for the purpose of endeavoring to ascertain the location of and develop ore bodies which might lie beneath the surface of the undeveloped property so acquired by it, and that having the foregoing purpose in mind, although the said Alice Company had long ceased to be a producing company, and although the said defendant the said Anaconda Copper Mining Company, nor any of its officers, directors or agents had, nor

have they now, any knowledge whatsoever of the existence of any valuable ore bodies within the limits of the property owned by the said Alice Company, or belonging to it, as a speculative proposition it was deemed advisable to make an offer to the said Alice Company to purchase its properties. That as a result of the negotiations so conducted the said Anaconda Copper Mining Company offered to exchange for the title to all of the property of the said Alice Company 30,000 shares of the capital stock of the said Anaconda Copper Mining Company.

This defendant further alleges that the value of the said 30,000 shares of said capital stock of the Anaconda Copper Mining Company, was and is largely in excess of any known value possessed by the said property of the said Alice Company, and that the value of said stock was largely in excess of the amount which any other or independent purchaser would be justified in paying for said property, and that only because of the reason that the said Anaconda Copper Mining Company owned mining property in the vicinity of and adjacent to the said property of the said Alice Company, and was in possession of underground workings from which explorations might be economically conducted for the purpose of ascertaining the values, if any, possessed by the said property of the said Alice Company was the said Anaconda Copper Mining Company justified in paying so large a price as was paid for said property.

This defendant further alleges that in so far as the stockholders of the said Alice Gold and Silver Mining Company are concerned the transaction was of great benefit to them and the price paid was largely in excess of what could have been realized by the said Alice Company from any other source or for any other purpose. Admits that in the year 1910, the defendant, Anaconda Copper Mining Company purchased certain of the properties of the corporations designated in the bill of complaint as the Clark companies, but denies that such properties so purchased included all of the properties of the before mentioned Clark companies save some small or comparatively undeveloped tracts yielding zinc and copper only in insignificant amounts, and alleges that there are certain mining properties which were retained by said Clark interests, and which did not pass by said sale, which are valuable and are now comparatively large producers of zinc and copper in the Butte district. Denies that the said Anaconda Copper Mining Company paid for the said Clark properties the sum of \$12,000,000.00 or any other or greater sum than \$5,000,000.00 and denies that the purchase of said Clark properties was in connection with or had anything to do with the acquisition by the Anaconda Copper Mining Company of the properties of the various companies in which the Amalgamated Copper Company was interested or the property of the Red Metal Mining Company or the properties of the Alice Gold and Silver Mining

Company; and alleges that the purchase of said Clark properties was not planned or contemplated or consummated at the time the proceedings were instituted to vest the other properties above referred to in the said Anaconda Copper Mining Company. Admits that the capital stock of the Anaconda Copper Mining Company was increased in the month of March, 1910, from \$30,000,000.00 to \$150,000,000.00, but denies that said stock was so increased or increased at all, with a view to purchasing the said properties of the Clark Companies or to carrying out any purpose in connection with such purchase. Admits that all of the properties of the said Boston and Montana Consolidated Silver Mining Company, Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Developing Company, the successor in interest of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Copper Mining Company and the Red Metal Mining Company were by those corporations transferred to the said Anaconda Copper Mining Company, and admits in each instance, that the said Anaconda Copper Mining Company paid for the said property so acquired by it with its own stock issued in payment pursuant to resolutions adopted at meetings of stockholders of the said selling companies, respectively. Denies that by such purchase the Anaconda Copper Mining Company became the

owner of practically all the mines at or near the City of Butte producing copper, save those of the North Butte Mining Company; and admits that the Anaconda Copper Mining Company by such purchase became the owner of two copper smelters operating in the State of Montana, one of which had been owned by the Washoe Copper Company and the other by the Boston and Montana Consolidated Copper and Silver Mining Company, and alleges that were at said times two other copper smelters operating in the State of Montana. Denies that the said Amalgamated Copper Company caused the properties of the said corporations, or any of them, to be so transferred to the Anaconda Copper Mining Company, but admits that the said Amalgamated Copper Company as a stockholder in each of said corporations in which it held stock, together with other stockholders voted in favor of such transfers at the meetings authorizing such transfers held in pursuance of the law. Denies that prior to the year 1910 or at any other time, the said Amalgamated Copper Company, or any of the persons managing or directing its affairs, except the defendant, John D. Ryan, acting as hereinafter stated, with any purpose whatsoever, or with any view whatsoever, or otherwise or at all caused to be acquired by a corporation known as the Butte Coalition Company or otherwise, a majority of the stock of the defendant Alice Gold and Silver Mining Company; and defendant alleges

that the defendant, John D. Ryan, personally and for himself alone, and not as the representative of any corporation or person whatsoever was in the year 1906, interested in an option, given by stockholders of the Alice Company upon stock held by them, which option was afterwards turned over to the said Butte Coalition Mining Company, or persons representing or acting for it; and denies that the Butte Coalition Company was organized by the said Amalgamated Copper Company or the said parties managing or directing its affairs or of the stock of which it or they at all or any time since its organization held or owned a majority or a controlling interest, or any of them. Admits that prior to the year 1910, the Butte Coalition Company had acquired a majority interest, to-wit, approximately 234,000 shares of the capital stock of the defendant Alice Gold and Silver Mining Company, which stood in the names of certain of the officers and representatives of said Butte Coalition Company. Denies that the Amalgamated Copper Company or the Anaconda Copper Mining Company or either of them had or has at any time controlled or dominated the business or affairs of the said Alice Gold and Silver Mining Company or through their or any of their servants, agents or representatives have elected boards or a board of directors or any directors of the said Alice Gold and Silver Mining Company, or through such board of directors or otherwise except as hereinafter stated have been in possession

for more than two years last past or any other period of all or any of the mining properties of the said defendant Alice Gold and Silver Mining Company, and denies that said or or any property of the said Alice Gold and Silver Mining Company are, so far as defendants have any knowledge or information, rich in ores of zinc or copper or gold or silver or any other metal. Admits that since the purchase by and conveyance to the Anaconda Copper Mining Company of the properties of the Alice Gold and Silver Mining Company on the 31st day of May, 1910, the defendant Anaconda Copper Mining Company has been in possession of the properties formerly owned by the said Alice Gold and Silver Mining Company.

This defendant alleges that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company has ever been the owner or holder of any stock in the said Alice Gold and Silver Mining Company, excepting that subsequent to the 20th day of December, 1911, the Amalgamated Copper Company acquired certain of the stock of the said Alice Gold and Silver Mining Company under the circumstances, as follows, viz: It was the original plan of the stockholders and officers of the said Alice Gold and Silver Mining Company in the event of a transfer by said Alice Company of all of its properties to the Anaconda Copper Mining Company to dissolve by proceedings taken in accordance with

the laws of the State of Utah, the said Alice Gold and Silver Mining Company, and to distribute its assets, to-wit, the said Thirty Thousand shares of stock of the Anaconda Copper Mining Company, among the stockholders of the said Alice Company, as there would have remained no reason for maintaining the organization of said Alice Company; and at a stockholder's meeting of said Alice Company duly called and held such dissolution was voted by the holders of a very large majority, to-wit, practically three-fourth of the capital stock of said Alice Company, and in accordance therewith proceedings were instituted in the courts of Salt Lake County, Utah, to obtain a decree of dissolution. Some of the complainants in this action appeared in that proceeding and objected to the dissolution of the company and subsequently filed this action, and in this action applied for an injunction pendente lite to prevent the distribution by the Alice Company of the shares of the stock of the Anaconda Copper Mining Company held by it. While this suit and such application for a temporary injunction therein were pending, numerous shareholders of the Alice Company became anxious to have divided among the stockholders of the Alice Company the capital stock of the Anaconda Copper Mining Company, to which each of said stockholders should be entitled, and numerous inquiries and importunities were received by the officers of said Alice Company to this end. For the purpose of accommo-

dating such stockholders, on or about December 20, 1911, the said Amalgamated Copper Company proposed to the stockholders of the Alice Gold and Silver Mining Company that it, the Amalgamated Copper Company would procure capital stock of the said Anaconda Copper Mining Company, and exchange such Anaconda Copper Mining Company stock for the stock of the Alice Gold and Silver Mining Company, upon the same basis that the said Anaconda Company stock held by said Alice Company would be by law distributed among its shareholders in case of a legal dissolution, that is, giving to each Alice Company shareholder his proportionate share of the assets of the said Alice Company. Thereafter stockholders owning stock in the said Alice Gold and Silver Mining Company to the number of 353,446 shares, which included the Butte Coalition Mining Company, as the owner of 234,215 shares of such Alice Company stock, availed themselves of this offer, and exchanged with said Amalgamated Copper Company 353,446 shares of the capital stock of the Alice Gold and Silver Mining Company for shares of stock of the said Anaconda Company, and the said Amalgamated Copper Company thus became and is now the owner and holder of 353,446 shares of the capital stock of the said Alice Gold and Silver Mining Company, and the same and the whole thereof was acquired by the said Amalgamated Copper Company in the manner and for the pur-

poses above stated and for no other purpose.

Admits that prior to the 27th day of May, 1910, the directors of the said Alice Gold and Silver Mining Company caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the City of Salt Lake on the 27th day of May, 1910, for the purpose of considering and ratifying the action of the Board of Directors in adopting a resolution, and contract providing for the transfer of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company. Denies that the said directors in calling such meeting or in anything in connection therewith acted under the direction of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or any of the officers thereof or any of the parties directing the business or operation of either of the said companies; and denies that said meeting was called or the notice thereof given pursuant to any purpose of said Amalgamated Copper Company or of any of the parties directing its affairs as set forth in said amended bill of complaint, but admits that said meeting was called in connection with the proposition theretofore made by the Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company to purchase its properties for the said consideration aforesaid.

Admits that pursuant to the notice and call, a meeting of the stockholders of the said Alice Gold and Silver Mining Company was held at the office of said company in the City of Salt Lake on the 27th day of May, 1910. Denies that at such meeting there was represented stock to the number of 310,963 shares or any greater number than 295,100 shares of the total of 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company; and denies that 287,000 or any other number of the shares of said Alice Gold and Silver Mining Company represented at said meeting were owned by the said Amalgamated Copper Company or the said Anaconda Copper Mining Company, or anyone representing them or either of them. Denies that all or any of the stock which was voted at the said meeting was voted by one E. S. Ferry and one L. O. Evans, but admits that a great portion of said stock was voted by one E. S. Ferry and other persons representing the said stockholders as proxies; denies that the said E. S. Ferry was at said time or has at any time been an attorney or employee of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company. Admits that 234,215 shares of the total of 295,100 shares of stock represented at said meeting were owned by the said Coalition Mining Company and were voted by proxies given by the persons in whose names the said stock stood upon the books of said Alice Gold and Silver Mining Company.

Admits and alleges that at the said stockholder's meeting so called and held, a resolution was presented and adopted confirming and ratifying the previous action of the Board of Directors, in authorizing and entering into a contract for the transfer of, and authorizing the transfer of, all of the property of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said latter company, but denies that said resolution was presented by the said L. O. Evans or that the said L. O. Evans was present at said meeting.

Admits that the said resolution was carried at said meeting, but denies that the same was carried by a vote of 298,598 shares for, or 13,385 shares against the same, but alleges that the said resolution was carried by a vote of 289,590 shares for and 5,510 shares voting against the same. Admits that the said E. S. Ferry and certain other persons voted all of the shares for which they had proxies in favor of the said resolution, and admits that all of the complainants who were present or represented at the meeting voted against the same, but denies that the said L. O. Evans voted any shares at said meeting in any capacity whatsoever, and denies that any of the orators or complainants herein protested at said meeting against the resolution for the transfer of said properties except by such protest as was shown by the voting of those present or represented at said meeting against the said

resolution, the said complainants so present or represented being as follows: Joseph S. Baer in person; J. R. Walker in person; Peter Geddes by J. R. Walker, his proxy. Denies that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not at the time the said meeting was called or have not since been at any time worth more than \$1,020,000.00; and denies that the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or all or any of the parties concerned in the effort to procure the transfer of the said properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all or any times, well or at all knew that the said 30,000 shares of stock were not at said time or have not since been worth more than \$1,020,000.00. And defendant alleges the fact to be that the said 30,000 shares of stock at and for sometime prior to said date were of the value of \$1,500,000 and at various times since said date have been worth and have had an actual market value of approximately the sum of \$1,500,000.00. Denies that the properties of the said defendant Alice Gold and Silver Mining Company have at all or any of said times been worth upwards of \$15,000,000.00 or upwards of any sum in excess of \$1,000,000.00; or that any of the said corporations or persons mentioned in said bill of complaint well or at all knew of any such value; and defendant alleges the facts to be that the complainants and all other share-

holders and all of the directors of the said Alice Gold and Silver Mining Company had full knowledge and means of knowledge available to them as to the value of the properties of the said Alice Gold and Silver Mining Company, and that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company, nor any of their officers or representatives, nor any of the defendants in this action, had any information or knowledge or source of information or knowledge regarding the properties of the Alice Gold and Silver Mining Company or their value, which was not possessed by the said Alice Gold and Silver Mining Company and its stockholders and officers, or which was not fully shown by the books, records and papers of the said Alice Gold and Silver Mining Company, all of which were at all times available to all of the stockholders, officers and representatives of said Alice Gold and Silver Mining Company, and that every reason for the purchase of the properties of the said Alice Gold and Silver Mining Company and the sale thereof by said latter company was communicated to and fully known by each and all of the stockholders and officers of the said Alice Gold and Silver Mining Company. Admits that acting under the authority of the said resolution so adopted at the stockholder's meeting, and its own action, the Board of Directors of the said Alice Gold and Silver Mining Company directed the officers of the said company to carry out the said resolution and

to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company, and denies, in so doing or in taking any other acts any of the directors of the said Alice Gold and Silver Mining Company acted under the direction of the Amalgamated Copper Company or the said Anaconda Copper Mining Company or their or either of their officers or representatives. Admits that acting under the authority of the said resolutions of stockholder's meetings and of the said Board of Directors, on the 31st day of May, 1910, the defendant John D. Ryan, as the President of the said Alice Gold and Silver Mining Company, and J. W. Allen, its Secretary, in the name of the said Alice Gold and Silver Mining Company, executed a deed of all the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which said deed was on the 24th day of June, 1910, recorded in the office of the County Clerk and Recorder of the County of Silver Bow, State of Montana, where said property is situated, and alleges that the said deed was so made, executed and delivered in pursuance of the authority in and direction to the said officers from the stockholders and Board of Directors of said Alice Company, and was so made, executed and delivered in consideration of the said Thirty Thousand shares of stock

of the said Anaconda Copper Mining Company, which were at the time of such transfer duly delivered to the said Alice Gold and Silver Mining Company, which ever since has been and now is the owner and possessor thereof. Admits that the said John D. Ryan, who executed the said deed in behalf of the said Alice Gold and Silver Mining Company as the President thereof is, and at the time of the execution thereof was also the President of the Amalgamated Copper Company and a member of the Board of Directors thereof, and is and was at the time of the execution of the said deed a member of the Board of Directors of the Anaconda Copper Mining Company, and was at said time with the other officers of the said Anaconda Copper Mining Company intrusted with the immediate direction of its affairs at and about the City of Butte; but denies that the Amalgamated Copper Company had at said time, or has had at any time since, any affairs or business at or about the City of Butte, excepting the voting of its stock at stockholder's meeting of the companies in which it is and was a stockholder.

Denies that the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, or any or either of them, are or is, or have or has, at any time, been the servant or servants, employe or employes of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or either of them or of anyone or more of the corporations controlled by the said Amalga-

mated Copper Company, and denies that the said defendants in any or all of the things done by them as set forth in said amended bill of complaint or otherwise acted under the direction or pursuant to any instruction received from the said Amalgamated Copper Company or anyone acting in its behalf.

Admits that after the transfer of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, there were instituted proceedings in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending and being resisted by certain of the complainants herein, but denies that said proceedings were instituted or caused to be instituted by the said defendant Anaconda Copper Mining Company or the said Amalgamated Copper Company or any company or person whatsoever controlling or directing the affairs of both or either of the said companies, and alleges that the said proceedings were instituted in pursuance to resolutions duly adopted at stockholders and directors meetings of the said Alice Gold and Silver Mining Company, called and held pursuant to the laws of the State of Utah and the by-laws of said corporation, and alleges that it was the object and purpose of the stockholders and officers of said Alice Gold and Silver Mining Company who favored the sale of

its property to the Anaconda Copper Mining Company as aforesaid, from the time that they first contemplated such sale, to submit to the stockholders and officers of said Alice Gold and Silver Mining Company a proposition to dissolve the said company by proceedings in conformity with the laws of the State of Utah, in case the said properties should be so sold.

Admits that the United Metals Selling Company is a corporation organized in or about the year 1900 with a capital stock of \$5,000,000.00, for the purpose of doing a general brokerage and commission business in metals and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company, it has acted as selling agent for certain of the producing companies, a majority or more of whose stock was held by the Amalgamated Copper Company, under arrangements entered into between it, the said United Metals Selling Company, and the said companies or corporations producing the said copper; and admits upon information and belief that the said United Metals Selling Company had become by the month of March, 1911, the largest copper broker in the world, and admit that the said United Metals Selling Company has acted as selling agent for all of the producing companies controlled by or in which the said Amalgamated Copper Company was or is a stockholder, and denies that during the year 1910, the said United Metals Selling Company marketed up-

wards of 500,000,000 pounds of copper or any other amount of copper in excess of 426,000,000 pounds.

Admits that on or about the month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said United Metals Selling Company of which the said John D. Ryan has become the president, and admits that as such stockholder the said Amalgamated Copper Company controls the sale of the copper product of the mines of the said Anaconda Copper Mining Company, and has so done since the transfers hereinbefore set forth, but denies that the Amalgamated Copper Company controls any other mining companies or companies producing copper or other metals other than the said Anaconda Copper Mining Company, but denies that the said United Metals Selling Company, or the Amalgamated Copper Company through said United Metals Selling Company or otherwise controls or sells the product of most of the producing mines of the United States, but admits that said United Metals Selling Company sells and markets the copper produced by other mining companies and operators than the said Anaconda Copper Mining Company.

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether this suit is not a collusive one to confer upon a court of the United States jurisdiction of a

case of which it would not otherwise have cognizance.

Defendant further denies each and every allegation and each and every part thereof, in the said amended bill of complaint contained not hereinbefore fully and specifically admitted or denied.

WHEREFORE, this defendant having fully answered, confessed, traversed, avoided or denied all the matters in said amended bill of complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

ALICE GOLD AND SILVER MINING CO.

By Roy S. Alley, Its Assistant Secretary.

C. F. KELLEY, L. O. EVANS,

W. B. RODGERS and D. GAY STIVERS,

[Seal]

Its Attorneys and Counsel,

616 Hennessy Bldg., Butte, Montana.

Due and personal service of the foregoing answer and receipt of a copy thereof is admitted and acknowledged this 7th day of March, 1913.

WALSH & NOLAN,

Solicitors and of Counsel for Complainants.

Filed March 7, 1913. Geo. W. Sproule, Clerk.

Thereafter, on March 7th, 1913, the answer of

defendant John D. Ryan, to the amended bill, was duly filed herein, in the words and figures following, to-wit:

[*Same title of Court and Cause.*]

Answer of Defendant John D. Ryan, to the Amended Bill of Complaint.

This defendant, John D. Ryan, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended bill of complaint herein, comes and answers thereto, or to so much thereof as he is advised is material to be answered, and says:

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether the complainants Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, or either of them, are or were co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, or otherwise, and therefore ask that Complainants be required to produce proof of the said allegations.

Admits that the defendant Alice Gold and Silver Mining Company is a corporation which was organized under the laws of the territory of Utah on or about the 6th day of March, 1880, with powers and for the purposes, set forth in its articles of incorporation, among said purposes and powers being those specified in said amended bill of complaint on page 2 thereof.

Admits that the defendant Anaconda Copper Mining Company is a corporation organized un-

der the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation, among such purposes being those specified in the amended bill of complaint herein.

Admits that complainants Peter Geddes, Margaret Ann Meehan, Eugene Blum, Edward Blum, Alphons Dreyfoos, Dreyfoos, Blum & Company, Leopold Freund and Alice Frey are, and for more than two years last past have been the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company as alleged in said amended bill of complaint.

Admits that the complainant Joseph R. Walker was on May 27, 1910, and ever since has been the owner of 360 shares, the complainant Joseph S. Baer on May 27, 1910, was the owner of 300 shares, and is now the owner of 400 shares, the complainant Henry S. Everett on May 27, 1910, was the owner of 400 shares, and is now the owner of 900 shares, the complainant Isaac Blum on May 27, 1910, was the owner of 1400 shares, and is now the owner of 1600 shares; that the complainant Isador Baer is now the owner of 200 shares, but denies that on the 27th day of May, 1910, he was the owner of any shares whatsoever of the capital stock of the said Alice Gold & Silver Mining Company; and denies each and every allegation and each and every part thereof in said amended bill of complaint contained concerning the ownership by orators or complainants or any of them of shares of the capital stock of the said Alice Gold

and Silver Mining Company except as hereinabove admitted.

Admits that prior to the granting and conveying of all of its property to the defendant Anaconda Copper Mining Company on the 31st day of May, 1910, the said Alice Gold and Silver Mining Company was and had been for many years prior thereto, the owner of extensive mining ground, situate in the County of Silver Bow, State of Montana, and of improvements thereon and of certain property used in connection therewith; deny that the same aggregated about 340 acres or any greater number of acres than 145, and denies that during the period of more than ten years last past the said corporation has been engaged in the prosecution of any business of mining or reducing ores or selling or disposing of the materials extracted therefrom or other products except on a very inconsequential scale; denies that the property or any property of the said corporation is now or at any time has been of the value of \$15,000,000.00, or that the same is now or at any time has been of a value of more than \$1,000,000.00, and alleges that the value of the property of the said Alice Company is now and for more than ten years last past has been of an almost wholly speculative character; admits that the said mining claims of the said Alice Company have been extensively worked and ores of large value taken therefrom; denies that said claims are within the rich mineral region in or adjacent to the City of

Butte, Silver Bow County, State of Montana, and allege that so far as it is shown by any development made to the present time and so far as is at present known the said claims are without the rich mineral region lying in and about the City of Butte.

And this defendant alleges the facts to be that the said Alice Gold and Silver Mining Company was incorporated in the year 1880 with a capital stock consisting of 400,000 shares of the par value of \$25.00 per share. That all or all but a very few shares of the capital stock of the said corporation were issued in payment of the mining claims acquired by it. That soon after its incorporation, mining operations were commenced by said Alice Company upon its said mining claims and quantities of ore bearing silver and gold, their value being mainly in the silver contained therein were extracted. That mining operations were conducted by said company on a somewhat extensive scale, but as the said ore bodies were mined out and the workings attained depth, the values of the ore became gradually less and the ores became very refractory and base and difficult and expensive of reduction, and that about the year 1893 the price of silver became very much less so that it became impossible to work or mine the said properties at a profit, and that the total proceeds derived by said Alice Company from its mining operations and paid to its stockholders as dividends or available as divi-

dends has been during the whole period of its existence less than \$1,100,000.00. That the mining operations of said company conducted since the year 1897, have resulted in a loss to said company. In the early history of said Alice Company, it owned and operated a large stamp mill for the reduction of its ores, but that in later years as the said ores became base and refractory and of low grade, the said mill became useless and prior to the year 1907, was destroyed by fire. That the machinery and other equipment used in and about said Alice mines in operating the same became more or less worn out and obsolete, and was inadequate to operate the said properties at the depths to which the workings had been carried so that on May 27, 1910, and for some period prior thereto the assets of the said Alice Company in the way of improvements, machinery or other property used in connection with its mining claims, were of very small value. That the said mining claims formerly owned by the said Alice Company have not now and have not had for a period of more than ten years last past any ores or ore bodies developed or showing of any commercial value, the same being of such low grade and value and of such a base and refractory character that they could not be profitably worked under any known process. Of the property formerly owned by said Alice Company, there is a considerable portion of the same which is undeveloped and which may develop ore bodies of value, but that to develop

the same, so as to make available any ore bodies which may be contained within them, it will be necessary to conduct developments on a very extensive scale and to very great depths, necessitating the expenditure of large sums of money, probably aggregating many hundreds of thousands of dollars. That on May 27, 1910, the said Alice Company, because of the unprofitable character of its operations for a number of years, had no funds, and had incurred indebtedness in the necessary care and maintenance of its property, and that said indebtedness on the 27th day of May, 1910, was in excess of the sum of \$35,000.00, to meet which the said Alice Company had no funds or assets except its mining claims.

Admits that prior to the year 1899, there were a number of independent companies engaged in mining at the City of Butte and in extracting the ores from claims within the mining region in and about the City of Butte and in reducing the same and in selling and disposing of the minerals extracted from the same, the greater portion of which were by the said companies transported from the City of Butte, in the State of Montana, to the City of New York, and other markets in the eastern states and beyond the State of Montana, where the same were by the said companies sold and disposed of, and that among other companies so engaged in such business were the defendants Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company, the Washoe

Copper Company, the Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Parrott Silver and Copper Mining Company, the Colorado Mining and Smelting Company, a group of companies known collectively as the Heinze companies, by reason of the fact that one F. Augustus Heinze was the chief factor therein, including the Montana Ore Purchasing Company, Johnstown Mining Company, Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark corporations, owing to the fact that one W. A. Clark was the chief factor in said companies, being composed of the Colusa Parrot Mining and Smelting Company and the Original Mining Company; and denies that all of the said corporations were at any time competing with each other in the sale of the products of the mines so owned and operated by them as aforesaid in the said markets within the United States or beyond the State of Montana, where said products were by such companies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save also that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company; and denies that the stock of said last named companies was held practically by the same persons,

and defendant alleges the fact to be that the operations of the said Alice Company in and for several years prior to the year 1899 had been on a small scale, and that the only products of value at any time produced by the said Alice Company consisted of silver and gold and that no copper was ever produced or marketed from the mines of the said Alice Company. That none of the said corporations above named ever sold its copper or other products directly to the consumer, but that during all of the years prior to 1899, as well as since, because of the fact that it has always been the custom in the copper trade for sales of copper to be made subject to delivery at any place in the world designated by the purchaser, it has been necessary that the sales thereof be handled by large concerns, and that the copper and other products of said mining companies have always been disposed of by being consigned to one or more of the large selling agencies maintained and conducted in the United States.

Admits that in the year 1899, and at all times since, a large share of the copper produced in the world, and a still larger portion of that produced in the United States was and still is produced within the State of Montana from ores mined within the said mining region at and near the City of Butte; and alleges that the proportionate amount of the copper produced in the United States and in the world produced in the said Butte mining region has been growing less each year since the

year 1899, and that in the years 1910 and 1911, the Butte mines produced about 23% of the copper produced within the United States, and about 13% of the world's production; deny that during all or any of the times either since or prior to the year 1899, any individual or corporation or association that could control such corporations, or any of them, as produced the greater or any portion or all of the mineral output of the city of Butte or vicinity could by reason of such fact or otherwise or at all control the supply of copper available for use in the several states of the union or elsewhere, or could fix or regulate the price of that commodity or of any commodity or metal in the markets of the union or in any market or state whatsoever.

Denies that in the year 1899, or at any other time, certain or any individuals or individual, with a view to control in any way the production of copper or the supply thereof or to fix or regulate the price thereof in any market or at any place whatsoever, or to suppress competition in the sale thereof, or particularly or at all of the products of any of the mines at or near the City of Butte when the same should be transported for sale to any market in the eastern states or elsewhere, or at any time or under any conditions whatsoever or with any view or purpose whatsoever, entered into any conspiracy in restraint of trade or commerce among the several or any states or otherwise or at all; and deny that for any of the pur-

poses aforesaid or for the purpose of carrying out any conspiracy the said or any individuals organized under the laws of the State of New Jersey a corporation called the Amalgamated Copper Company, but ~~admits~~^{admits} that certain persons organized a corporation, known as the Amalgamated Copper Company, having powers as recited in its articles of incorporation, a part of which are stated in said amended bill of complaint. Denies that it was intended by the said persons, who organized the same, that said corporation should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining or particularly in copper mining at or near the City of Butte as that it could control said corporations, and through the control of such corporations or otherwise regulate the supply or fix the price of copper in the markets or any market of the world or at any other place or in any other manner.

Admits that the said Amalgamated Copper Company was organized with a capital stock of \$75,000,000.00, and that about or prior to the month of June, 1901, it acquired all of the stock of the Washoe Copper Company and all of the capital stock of the Big Blackfoot Milling Company, a lumber company engaged in manufacturing timber, a portion of which was used in the Butte mines; and admits that it acquired approximately 51% of the capital stock of the Anaconda Copper Mining Company, and approximately 51% of the capital stock of the Parrot Silver and Copper Min-

ing Company; and denies that it acquired any of such capital stock in exchange for the capital stock of it, the Amalgamated Copper Company, but allege that the said Amalgamated Copper Company acquired all of the said capital stock by outright purchase; and deny that the said Amalgamated Copper Company acquired any larger percentage of the Anaconda Copper Mining Company or of the Parrot Silver and Copper Mining Company stock than is hereinabove stated; and deny that it at any time acquired any more than 4-5 of the capital stock of the Hennessy Mercantile Company, a trading company, engaged in general merchandise and dealing extensively with the men employed in the said and other mines at Butte, Montana, and alleges that long prior to the commencement of this action the said Amalgamated Copper Company sold and disposed of all its capital stock in said Hennessy Mercantile Company. Admits that on or about June 6, 1901, the capital stock of the Amalgamated Copper Company was increased to \$155,000,000.00, and that thereafter it acquired all but a few hundred shares of the stock of the said Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, and acquired all or practically all of the stock of the above mentioned Colorado Mining and Smelting Company; but deny that any of such capital stock was acquired by issuing in exchange thereof its own stock, but al-

leges that the said stock was acquired by outright purchase. Admits that at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between said Boston and Montana Consolidated Silver Mining Company and the said Butte and Boston Consolidated Mining Company on the one side and the said F. Augustus Heinze and one or more of the said Heinze companies on the other side, and that upon the acquisition by the said Amalgamated Copper Company of stock the said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company as a stockholder interested in said litigant corporations; and admits that about the year 1899, and for several years thereafter, the greater portion of the companies in which said Amalgamated Copper Company was interested, doing business at or near the City of Butte became and were also involved in litigation with the said Heinze interests, and admit that all the properties of certain of the said Heinze companies together with the properties of certain companies organized by Heinze after the organization of the said Amalgamated Copper Company, among others, the Corra-Rock Island Mining Company, passed to a corporation known as the Red Metal Mining Company with a capital stock of \$11,000,000.00, the purchase price of said

properties being approximately \$10,500,000.00 and other valuable considerations but deny that the said Red Metal Mining Company was organized by the Amalgamated Copper Company or by parties intimately associated with it, or that the acquisition of the said Heinze properties or any of them was made or carried out or accomplished in the pursuit of any purpose with which the said Amalgamated Copper Company was organized as set out in the said amended bill of complaint, or otherwise, and deny that the acquisition of the said Heinze properties by the said Red Metal Mining Company had anything whatsoever to do in any manner with the Amalgamated Copper Company or its purposes.

Denies that prior or since the year 1910, or at any other time, the said Amalgamated Copper Company had or has become the owner of practically all or any of the stock of the said Red Metal Mining Company, or had likewise or at all become the owner of a majority or any of the stock of various or any companies engaged in the business of mining or smelting copper or other ores in the State of Utah or elsewhere in the mining region in the western part of the United States, excepting its interests in the Butte corporations herein admitted, and 50,000 shares of the capital stock of the Butte Coalition Mining Co., a corporation having issued capital stock of 1,000,000 shares of a par value of \$15.00 per share; and deny that the said Amalgamated Copper Company at any

time became the owner of any of the capital stock of the International Smelting and Refining Company, the corporation referred to in the amended bill of complaint; and denies that any interests which have been acquired by the said Amalgamated Copper Company in any corporation or company, or any interest whatsoever acquired by the said Amalgamated Copper Company have been so acquired with a view more completely or at all to carry out any of the purposes set forth in the said amended bill of complaint except the carrying on of the lawful and legitimate purposes of its incorporation as specified in its articles of incorporation.

Admits that during the year 1910, it was deemed advisable by the managing officers and those directing the affairs of the Amalgamated Copper Company. and alleges that it was also deemed advisable by other stockholders in the Anaconda Copper Mining Company, that the defendant the Anaconda Copper Mining Company should become vested with the title to the properties of the various companies in which the Amalgamated Copper Company was a stockholder and which owned properties adjoining each other at Butte, Montana, but denies that such conclusion was taken or view reached with the same purpose or to carry out more effectually, or at all, any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of com-

plaint, or to carry out more effectually or otherwise any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or that it was deemed advisable or planned to have the said defendant Anaconda Copper Mining Company vested with the title to all mining properties located at or near said City of Butte which by development or operation might give rise to competition in the production or sale of copper or other metals found in association with it, or that might be a potential or other competitor in the production or sale of copper or any other product, and alleges that possible competition or any question of competition as to copper produced in the Butte District did not enter into or have anything to do with any plan or purpose in connection with the acquisition by the Anaconda Copper Mining Company of any properties whatsoever.

And this defendant alleges on the contrary that the sole reasons which led to the acquisition by the defendant Anaconda Copper Mining Company of the properties of the said corporations above specified were, as hereinafter alleged.

The copper mines of the Butte District had been worked for many years, and in the prosecution of mining operations the said workings had been extended to great depths into the earth, so that the cost of extracting the ore containing copper and other valuable metals was constantly increasing

as was also the cost of keeping open the said workings and properly ventilating and draining the same.

Defendant further alleges, that up to the year 1910, all of said corporations referred to in said bill of complaint as the Amalgamated Companies had preserved their separate corporate organizations and were operated as independent mining concerns, each one possessing a separate and complete business organization, surface plants, shafts and equipment necessary to conducting operations as independent organizations. As a result of this method of conducting operations, defendant alleges that the cost of producing copper was greatly in excess of what said cost would have been if all of said corporations were merged into a single organization and the operations and business of said corporation so conducted as to eliminate the maintenance of the necessary separate organizations, plants and equipment with the attendant multiplication of different items of cost without the accomplishment of any useful or economic purpose. Defendant also further alleges, that on account of the increased underground temperature and the encountering of additional amounts of underground water, the ventilation and drainage of said mines became an exceedingly complex and expensive undertaking, and in order to properly carry out said ventilation and said drainage it became necessary that some uniform system should

be adopted under which it would be possible to drain and ventilate the entire underground mining area of the Butte district.

Defendant further alleges that all of the producing mines of said corporations are located within a comparatively small area in the Butte District; that the properties of the several corporations above referred to consist of many small and irregularly shaped mining claims; that the properties of the different corporations were contiguous to or adjacent to one another, so that in many cases the surface lines of the mining properties belonging to one corporation overlapped at varying angles the surface properties belonging to other corporations. That as increased depth in the mining operations new ore bodies were encountered having no tops or apices near the surface of the ground, and that it was impossible to fix with any degree of certainty, or without the doing of an enormous amount of development work, involving the expenditure of very large sums of money with no practical return therefrom, the title to the ownership of such underground ore bodies, and that as a result of the foregoing it became a matter of practical necessity that the titles to said underground ore bodies should be so unified that the necessity of determining the extralateral rights incident to the ownership of each individual mining claim could be eliminated. That the necessities arising out of the foregoing situation were of such a character

that they impelled the different corporations above specified to take up the matter of unifying the titles to the principal producing properties of the Butte District, and as a result therefrom and of the negotiations which were conducted for the purpose of accomplishing the unification of said titles, it resulted that in the year 1910 as aforesaid all of the foregoing above mentioned corporations conveyed the title to all of their physical properties to the Anaconda Copper Mining Company.

Defendant further alleges that some of the properties which the said Anaconda Copper Mining Company acquired by reason of the foregoing state of fact are adjacent to some of the mining claims formerly owned by the Alice Company. That it was the purpose of the said Anaconda Copper Mining Company to carry on extensive development work for the purpose of endeavoring to ascertain the location of and develop ore bodies which might lie beneath the surface of the undeveloped property so acquired by it, and that having the foregoing purpose in mind, although the said Alice Company had long ceased to be a producing company, and although the said defendant the said Anaconda Copper Mining Company, nor any of its officers, directors or agents had, nor have they now, any knowledge whatsoever of the existence of any valuable ore bodies within the limits of the property owned by the said Alice Company, or belonging to it, as a speculative prop-

osition it was deemed advisable to make an offer to the said Alice Company to purchase its properties. That as a result of the negotiations so conducted the said Anaconda Copper Mining Company offered to exchange for the title to all of the property of the said Alice Company 30,000 shares of the capital stock of the said Anaconda Copper Mining Company.

This defendant further alleges that the value of the said 30,000 shares of said capital stock of the Anaconda Copper Mining Co. was and is largely in excess of any known value possessed by the said property of the said Alice Company, and that the value of said stock was largely in excess of the amount which any other or independent purchaser would be justified in paying for said property, and that only because of the reason that the said Anaconda Copper Mining Company owned mining property in the vicinity of and adjacent to the said property of the said Alice Company, and was in the possession of underground workings from which explorations might be economically conducted for the purpose of ascertaining the values, if any, possessed by the said property of the said Alice Company was the said Anaconda Copper Mining Company justified in paying so large a price as was paid for said property. This defendant further alleges that in so far as the stockholders of the said Alice Gold and Silver Mining Company are concerned the transaction was of great benefit to them and the price paid was

largely in excess of what could have been realized by the said Alice Company from any other source or for any other purpose. Admits that in the year 1910, the defendant, Anaconda Copper Mining Company purchased certain of the properties of the corporations designated in the bill of complaint as the Clark companies, but deny that such properties so purchased included all of the properties of the before mentioned Clark companies save some small or comparatively undeveloped tracts yielding zinc and copper only in insignificant amounts, and allege that there are certain mining properties which were retained by said Clark interests, and which did not pass by said sale, which are valuable and are now comparatively large producers of zinc and copper in the Butte district. Denies that the said Anaconda Copper Mining Company paid for the said Clark properties the sum of \$12,000,000.00 or any other or greater sum than \$5,000,000.00, and deny that the purchase of said Clark properties was in connection with or had anything to do with the acquisition by the Anaconda Copper Mining Company of the properties of the various companies in which the Amalgamated Copper Company was interested or the property of the Red Metal Mining Company or the properties of the Alice Gold and Silver Mining Company; and allege that the purchase of said Clark properties was not planned or contemplated or consummated at the time the proceedings were instituted to vest the other proper-

ties above referred to in the said Anaconda Copper Mining Company. Admits that the capital stock of the Anaconda Copper Mining Company was increased in the month of March, 1910, from \$30,000,000.00 to \$150,000,000.00, but deny that said stock was so increased, or increased at all, with a view to purchasing the said properties of the Clark companies or to carrying out any purpose in connection with such purchase. Admits that all of the properties of the said Boston and Montana Consolidated Silver Mining Company, Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Developing Company, the successor in interest of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Company, and the Red Metal Mining Company were by those corporations transferred to the said Anaconda Copper Mining Company, and admits in each instance, that the said Anaconda Copper Mining Company paid for the said property so acquired by it with its own stock issued in payment pursuant to resolutions adopted at meetings of stockholders of the said selling companies, respectively. Denies that by such purchase the Anaconda Copper Mining Company became the owner of practically all the mines at or near the City of Butte producing copper, save those of the North Butte Mining Company, and admit that the Anaconda Copper Mining Company by such

purchase became the owner of two copper smelters operating in the State of Montana, one of which had been owned by the Washoe Copper Company and the other by the Boston and Montana Consolidated Copper and Silver Mining Company, and allege that were at said times two other copper smelters operating in the State of Montana. Denies that the said Amalgamated Copper Company caused the properties of the said corporations or any of them, to be so transferred to the Anaconda Copper Mining Company, but admits that the said Amalgamated Copper Company as a stockholder in each of said corporations in which it held stock, together with other stockholders voted in favor of such transfers at the meetings authorizing such transfers held in pursuance of the law, denies that prior to the year 1910 or at any other time, the said Amalgamated Copper Company, or any of the persons managing or directing its affairs, except the defendant, John D. Ryan, acting as hereinafter stated, with any purpose whatsoever, or with any view whatsoever, or otherwise or at all caused to be acquired by a corporation known as the Butte Coalition Company or otherwise, a majority of the stock of the defendant Alice Gold and Silver Mining Company; and defendant alleges that the defendant, John D. Ryan, personally, and for himself alone, and not as the representative of any corporation or person whatsoever, was in the year 1906, interested in an option, given by stockholders of the Alice

Company upon stock held by them, which option was afterwards turned over to the said Butte Coalition Mining Company, or persons representing or acting for it; and deny that the Butte Coalition Company was organized by the said Amalgamated Copper Company or the said parties managing or directing its affairs or of the stock of which it or they at all or any time since its organization held or owned a majority or a controlling interest, or any of them. Admit that prior to the year 1910, the Butte Coalition Company had acquired a majority interest, to-wit, approximately 234,000 shares of the capital stock of the defendant Alice Gold and Silver Mining Company, which stood in the names of certain of the officers and representatives of said Butte Coalition Company.

Denies that the Amalgamated Copper Company or the Anaconda Copper Mining Company or either of them had or has at any time controlled or dominated the business or affairs of the said Alice Gold and Silver Mining Company or through their or any of their servants, agents or representatives have elected boards or a board of directors or any directors of the said Alice Gold and Silver Mining Company, or through such board of directors or otherwise, except as hereinafter stated have been in possession for more than two years last past or any other period of all or any of the mining properties of the said defendant Alice Gold and Silver Mining Company, and denies that said or any properties of the said Alice Gold and

Silver Mining Company are, so far as defendants have any knowledge or information, rich in ores of zinc or copper or gold or silver or any other metal. Admits that since the purchase by and conveyance to the Anaconda Copper Mining Company of the properties of the Alice Gold and Silver Mining Company on the 31st day of May, 1910, the defendant Anaconda Copper Mining Company has been in possession of the properties formerly owned by the said Alice Gold and Silver Mining Company.

This defendant alleges that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company has ever been the owner or holder of any stock in the said Alice Gold and Silver Mining Company, excepting that subsequent to the 20th day of December, 1911, the Amalgamated Copper Company acquired certain of the stock of the said Alice Gold and Silver Mining Company under the circumstances, as follows, viz; It was the original plan of the stockholders and officers of the said Alice Gold and Silver Mining Company in the event of a transfer by said Alice Company of all of its properties to the Anaconda Copper Mining Company to dissolve by proceedings taken in accordance with the laws of the State of Utah, the said Alice Gold and Silver Mining Company, and to distribute its assets, to-wit, the said Thirty Thousand shares of stock of the Anaconda Copper Mining Company, among the stockholders of the said Alice Company, as there

would have remained no reason for maintaining the organization of said Alice Company, and at a stockholder's meeting of said Alice Company duly called and held such dissolution was voted by the holders of a very large majority, to-wit, practically three-fourths of the capital stock of said Alice Company and in accordance therewith proceedings were instituted in the courts of Salt Lake County, Utah, to obtain a decree of dissolution. Some of the complainants in this action appeared in that proceeding and objected to the dissolution of the company and subsequently filed this action, and in this action applied for an injunction pendente lite to prevent the distribution by the Alice Company of the shares of the stock of the Anaconda Copper Mining Company held by it. While this suit and such application for a temporary injunction therein were pending, numerous shareholders of the Alice Company became anxious to have divided among the stockholders of the Alice Company the capital stock of the Anaconda Copper Mining Company, to which each of said stockholders would be entitled, and numerous inquiries and importunities were received by the officers of said Alice Company to this end. For the purpose of accommodating such stockholders on or about December 20, 1911, the said Amalgamated Copper Company proposed to the stockholders of the Alice Gold and Silver Mining Company that it, the Amalgamated Copper Company, would procure capital stock of the said Anaconda

Copper Mining Company, and exchange such Anaconda Copper Mining Company stock for the stock of the Alice Gold and Silver Mining Company, upon the same basis that the said Anaconda Company stock held by said Alice Company would be by law distributed among its shareholders in case of a legal dissolution, that is, giving to each Alice Company shareholder his proportionate share of the assets of the said Alice Company. Thereafter stockholders owning stock in the said Alice Gold and Silver Mining Company to the number of 353,446 shares, which included the Butte Coalition Mining Company, as the owner of 234,215 shares of such Alice Company stock, availed themselves of this offer, and exchanged with said Amalgamated Copper Company 353,447 shares of the capital stock of the Alice Gold and Silver Mining Company for shares of stock of the said Anaconda Company, and the said Amalgamated Copper Company thus became and is now the owner and holder of 353,446 shares of the capital stock of the said Alice Gold and Silver Mining Company, and the same and the whole thereof was acquired by the said Amalgamated Copper Company in the manner and for the purposes above stated and for no other purpose.

Admits that prior to the 27th day of May, 1910, the directors of the said Alice Gold and Silver Mining Company caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the City of Salt

Lake on the 27th day of May, 1910, for the purpose of considering and ratifying the action of the Board of Directors in adopting a resolution and contract providing for the transfer of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company. Denies that the said directors in calling such meeting or in anything in connection therewith acted under the direction of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or any of the officers thereof or any of the parties directing the business or operation of either of said companies; and denies that the said meeting was called or the notice thereof given pursuant to any purpose of said Amalgamated Copper Company or of any of the parties directing its affairs as set forth in said amended bill of complaint; but admits that said meeting was called in connection with the proposition theretofore made by the Anaconda Mining Company to the said Alice Gold and Silver Mining Company to purchase its properties for the said consideration aforesaid.

Admits that pursuant to the notice and call, a meeting of the stockholders of the said Alice Gold and Silver Mining Company was held at the office of said company in the City of Salt Lake on the 27th day of May, 1910. Denies that at such meeting there was represented stock to the number of

310,963 shares or any greater number than 295,100 shares of the total of 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company; and denies that 287,000 or any other number of the shares of said Alice Gold and Silver Mining Company represented at said meeting were owned by said Amalgamated Copper Company or the said Anaconda Copper Mining Company, or anyone representing them or either of them. Denies that all or any of the stock which was voted at the said meeting was voted by E. S. Ferry and one L. O. Evans, but admits that a great portion of said stock was voted by one E. S. Ferry and other persons representing the said stockholders as proxies; denies that the said E. S. Ferry was at said time or has at any time been an attorney or employee of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company. Admits that 234,215 shares of the total of 295,100 shares of stock represented at said meeting were owned by the said Coalition Mining Company and were voted by proxies given by the persons in whose names the said stock stood upon the books of said Alice Gold and Silver Mining Company.

Amits and alleges that at the said stockholder's meeting, so called and held, a resolution was presented and adopted confirming and ratifying the previous action of the Board of Directors in authorizing and entering into a contract for the transfer of, and authorizing the transfer of, all of

the property of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said latter company, but denies that said resolution was presented by the said L. O. Evans or that the said L. O. Evans was present at said meeting.

Admits that the said resolution was carried at said meeting, but denies that the same was carried by a vote of 298,598 shares for, or 13,385 shares against the same, but alleges that the said resolution was carried by a vote of 289,590 shares for and 5,510 shares voting against the same. Admits that the said E. S. Ferry and certain other persons voted all of the shares for which they had proxies in favor of the said resolution and admits that all of the complainants who were presented or represented at the meeting voted against the same, but denies that the said L. O. Evans voted any shares at said meeting in any capacity whatsoever, and denies that any of the orators or complainants herein protested at said meeting against the resolution for the transfer of said properties except by such protest as was shown by the voting of those present or represented at said meeting against the said resolution, the said complainants so present or represented being as follows: Joseph S. Baer in person; J. R. Walker in person; Peter Geddes by J. R. Walker, his proxy. Denies that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not at the

time the said meeting was called or have not since been at any time worth more than \$1,020,000.00; and denies that the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or all or any of the parties concerned in the effort to procure the transfer of the said properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all or any times, well or at all knew that the said 30,000 shares of stock were not at said time or have not since been worth more than \$1,020,000.00. And defendant alleges the fact to be that the said 30,000 shares of stock at and for sometime prior to said date were of the value of \$1,500,000.00, and at various times since said date have been worth and have had an actual market value of approximately the sum of \$1,500,000.00. Denies that the properties of the said defendant Alice Gold and Silver Mining Company have at all or any of said times been worth upwards of \$15,000,000.00 or upwards of any sum in excess of \$1,000,000.00; or that any of the said corporations or persons mentioned in said bill of complaint well or at all knew of any such value; and defendant alleges the facts to be that the complainants and all other shareholders and all of the directors of the said Alice Gold and Silver Mining Company had full knowledge and means of knowledge available to them as to the value of the properties of the said Alice Gold and Silver Mining Company, and that neither the Amalgamated

Copper Company nor the Anaconda Copper Mining Company, nor any of their officers or representatives, nor any of the defendants in this action, had any information or knowledge or source of information or knowledge regarding the properties of the Alice Gold and Silver Mining Company or their value, which was not possessed by the said Alice Gold and Silver Mining Company and its stockholders and officers, or which was not fully shown by the books, records and papers of the said Alice Gold and Silver Mining Company, all of which were at all times available to all of the stockholders, officers and representatives of said Alice Gold and Silver Mining Company, and that every reason for the purchase of the properties of the said Alice Gold and Silver Mining Company and the sale thereof by said latter company was communicated to and fully known by each and all of the stockholders and officers of the said Alice Gold and Silver Mining Company. Admits that acting under the authority of the said resolution so adopted at the stockholder's meeting, and its own action, the Board of Directors of the said Alice Gold and Silver Mining Company directed the officers of the said company to carry out the said resolution and to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company, and denies that in so doing or in taking any other

acts any of the directors of the said Alice Gold and Silver Mining Company acted under the direction of the Amalgamated Copper Company or the said Anaconda Copper Mining Company or their or either of their officers or representatives. Admits that acting under the authority of the said resolutions of stockholder's meetings and of the said Board of Directors, on the 31st day of May, 1910, the defendant John D. Ryan, as the President of the said Alice Gold and Silver Mining Company, and J. W. Allen its Secretary, in the name of of the said Alice Gold and Silver Mining Company, executed a deed of all the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which said deed was on the 24th day of June, 1910, recorded in the office of the County Clerk and Recorder of the County of Silver Bow, State of Montana, where said property is situated, and alleges that the said deed was so made, executed and delivered in pursuance of the authority in and direction to the said officers from the stockholders and Board of Directors of said Alice Company, and was so made, executed and delivered in consideration of the said Thirty Thousand shares of stock of the said Anaconda Copper Mining Company, which were at the time of such transfer duly delivered to the said Alice Gold and Silver Mining Company, which ever since has been and now is the owner and possessor thereof. Admits that the said John D. Ryan, who executed the said deed in behalf of the said Alice

Gold and Silver Mining Company as the President thereof is, and at the time of the execution thereof was also the President of the Amalgamated Copper Company and a member of the Board of Directors thereof, and is and was at the time of the execution of the said deed a member of the Board of Directors of the Anaconda Copper Mining Company, and was at said time with the other officers of the said Anaconda Copper Mining Company intrusted with the immediate direction of its affairs at and about the City of Butte; but denies that the Amalgamated Copper Company had at said time, or has had at any time since, any affairs or business at or about the City of Butte, excepting the voting of its stock at stockholder's meetings of the companies in which it is and was a stockholder.

Denies that the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, or any or either of them, are or is, or have or has, at any time, been the servant or servants, employe or employes of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or either of them or of anyone or more of the corporations controlled by the said Amalgamated Copper Company, and denies that the said defendants in any or all of the things done by them as set forth in said amended bill of complaint or otherwise acted under the direction or pursuant to any instruction received from the said Amalgamated Copper Company or any one acting in its behalf.

Admits that after the transfer of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, there were instituted proceedings in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending and being resisted by certain of the complainants herein, but denies that the said proceedings were instituted or caused to be instituted by the said defendant Anaconda Copper Mining Company or the said Amalgamated Copper Company or any company or person whatsoever controlling or directing the affairs or both or either of the said companies, and alleges that the said proceedings were instituted in pursuance to resolutions duly adopted at stockholders and directors meetings of the said Alice Gold and Silver Mining Company, called and held pursuant to the laws of the State of Utah and the by-laws of said corporation, and alleges that it was the object and purpose of the stockholders and officers of said Alice Gold and Silver Mining Company who favored the sale of its property to the Anaconda Copper Mining Company as aforesaid, from the time that they first contemplated such sale, to submit to the shareholders and officers of said Alice Gold and Silver Mining Company a proposition to dissolve the said company by proceedings in conformity

with the laws of the state of Utah, in case the said properties should be so sold.

Admits that the United Metals Selling Company is a corporation organized in or about the year 1900 with a capital stock of \$5,000,000.00, for the purpose of doing a general brokerage and commission business in metals and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company, it has acted as selling agent for certain of the producing companies, a majority or more of whose stock was held by the Amalgamated Copper Company, under arrangements entered into between it, the said United Metals Selling Company, and the said companies or corporations producing the said copper; and admits upon information and belief that the said United Metals Selling Company had become by the month of March, 1911, the largest copper broker in the world, and admits that the said United Metals Selling Company has acted as selling agent for all of the producing companies controlled by or in which the said Amalgamated Copper Company was or is a stockholder, and denies that during the year 1910, the said United Metals Selling Company marketed upwards of 500,000,000 pounds of copper or any other amount of copper in excess of 426,000,000 pounds.

Admits that on or about the month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said

United Metals Selling Company of which the said John D. Ryan has become the president, and admits that as such stockholder the said Amalgamated Copper Company controls the sale of the copper product of the mines of the said Anaconda Copper Mining Company, and has so done since the transfers hereinbefore set forth, but denies that the Amalgamated Copper Company controls any other mining companies or companies producing copper or other metals other than the said Anaconda Copper Mining Company, but denies that the said United Metals Selling Company, or the Amalgamated Copper Company through said United Metals Selling Company or otherwise controls or sells the product of most of the producing mines of the United States, but admits that said United Metals Selling Company sells and markets the copper produced by other mining companies and operators than the said Anaconda Copper Mining Company.

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether this suit is not a collusive one to confer upon a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

Defendant further denies each and every allegation and each and every part thereof, in the said amended bill of complaint contained not hereinbefore fully and specifically admitted or denied.

WHEREFORE, this defendant having fully an-

swered, confessed, traversed, avoided or denied all the matters in said amended bill of complaint material to be answered according to his best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

JOHN D. RYAN,

By **C. F. KELLEY, L. O. EVANS,**

W. B. RODGERS and D. GAY STIVERS,

His Attorneys, and Counsel,

616 Hennessy Bldg., Butte, Montana.

Due and personal service of the foregoing answer, and receipt of a copy thereof is admitted and acknowledged this 7th day of March, 1913.

WALSH & NOLAN,

Solicitors and of Counsel for Complainants.

Filed March 7, 1913. Geo. W. Sproule, Clerk.

Thereafter, on July 2, 1915, an interlocutory Decree was duly entered herein, in the words and figures following, to-wit:

[Same title of Court and Cause.]

No. 1086. Decree.

The above entitled cause coming on to be heard before the court on the 18th day of June, 1914, upon the pleadings and proofs, the complainants appearing and being heard by their counsel, Thomas

J. Walsh, Esq., and the defendants Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan, by their counsel, L. O. Evans, Esq. and W. B. Rodgers, Esq. and the court having heard the arguments of the counsel, and having considered proofs thereafter submitted by them, and being fully advised, and having thereafter, on the first day of May, 1915, rendered and filed its decision and opinion herein, it is now, on this 2 day of July, 1915, by the court ORDERED, ADJUDGED AND DECREED, that this cause be set down for hearing before this court on the —, the 19th day of July, 1915, for the taking of such testimony as the parties may submit touching:

1. The amount of debts and obligations of the Alice Gold and Silver Mining Company assumed by the Anaconda Copper Mining Company as a part of the consideration of the transfer, with any interest thereon by it paid or payable and at the rate thereof, and interest upon said debts and obligations and interest paid, from date of payment and at the rate thereof.

2. An account of all reasonable and necessary expenditures made by the Anaconda Copper Mining Company upon and in connection with the properties transferred to it by the Alice Gold and Silver Mining Company, in the maintenance, repair, care and operation of said properties, including all payments of taxes and assessments legally levied thereon, and the amounts realized

by said Anaconda Copper Mining Company from said properties, and from all ores mined or extracted therefrom by it, or its lessees, or those acting under it, after deducting the reasonable cost and expense of such operation and mining.

3. The amount of dividends paid by the Anaconda Copper Mining Company to the Alice Gold and Silver Mining Company upon the Anaconda Copper Mining Company's stock so received by the said Alice Gold and Silver Mining Company in consideration of the said transfer, with interest thereon received. And also inventory and sufficient description of all property transferred and that is subject to resale.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that upon the determination by the court upon such hearing, of the amount of the debts and obligations of the said Alice Gold and Silver Mining Company, assumed by the said Anaconda Copper Mining Company, with any such interest, and of the amounts, if any, due to the said Anaconda Copper Mining Company upon the accounting above provided for, and of the amount of dividends paid by the said Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company as aforesaid, with any such interest, these amounts, together with the sum of \$1,500,000.00 heretofore determined by the court to be the value of the Anaconda corporate stock transferred to the Alice Gold and Silver Mining Company by the Anaconda Copper Mining Com-

pany, as set forth in the pleadings herein, shall be taken as the total proceeds received by the said Alice Gold and Silver Mining Company for its properties so transferred, as consideration for the said transfer.

That John Lindsay, of Butte, an Attorney of this Court, who is hereby designated and appointed as Special Master for the purposes of carrying out this decree, shall cause a notice to be published in a newspaper published in the City of Butte, in one published in the City of New York, and one published in the City of Boston, at least once a week for a period of twelve weeks, to the effect that pursuant to the decree of this court, this day made, all of the property (describing it) owned by the Alice Gold and Silver Mining Company on the 27th day of May, 1910, will be sold at public sale, in one parcel on the steps of the Federal Building in the city of Butte, County of Silver Bow, State of Montana, for cash, on the terms herein, on a day to be named in the said notice, said day to be not less than 5 days nor more than 15 days after the last day of publication of said notice, and said notice to provide that no bid will be received or considered unless in an amount greater than the consideration for the transfer of said property as hereinbefore specified, as the same shall be found to be upon the hearing herein ordered, and said notice shall also provide that no bidder shall be permitted to bid for said property at said sale without first depositing with the said Special Master, by cer-

tified check upon some Montana bank, payable to the order of the Special Master countersigned by the Judge of this Court, a sum at least equal to ten per cent of the amount of consideration for the transfer of said Alice Gold and Silver Mining Company's properties, to be determined on the hearing, as above set forth, such deposit to be made as security for the faithful performance of the bid, and for the payment of all costs and damages which may be caused by a failure to fully carry out said bid, including the costs of a re-sale, and any deficit in the purchase price received at such sale; any party to this action may become a bidder at such sale. The said Special Master shall have the power to adjourn such sale from day to day, not exceeding in all a period of ten days.

If upon said sale any responsible bidder, who has made such deposit as aforesaid, shall offer for the said properties a sum greater than the amount of the consideration for such transfer, so to be determined upon such hearing, and if such bidder is ready to comply with the terms of his bid, and if confirmed by the court, the transfer of the said properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company heretofore made, as set forth in the bill of complaint, on the 27th day of May, 1910, shall be annulled, cancelled and set aside, and the defendant Alice Gold and Silver Mining Company shall execute and deliver to the highest responsible bidder at such sale, upon a compliance with the

terms of his bid, a conveyance by grant deed of all of the said property, including all choses and rights of action in the said Alice Gold and Silver Mining Company; and if the said Alice Gold and Silver Mining Company shall fail for a period of sixty days to so execute and deliver said deed, if the execution and delivery of the same be not stayed by appeal, or by order of the court, then the said Special Master shall make, execute and deliver such conveyance for such property, for and on behalf of the said Alice Gold and Silver Mining Company; and upon the execution and delivery of such conveyance, the said defendant Anaconda Copper Mining Company is ordered and directed to forthwith deliver up the possession of all of said property to the said purchaser named in such conveyance; whereupon, the defendant Alice Gold and Silver Mining Company shall surrender to the defendant Anaconda Copper Mining Company the certificates of stock for thirty thousand shares of stock of the said Anaconda Copper Mining Company, received in consideration for such transfer, and pay to the Anaconda Copper Mining Company the amount of any dividends received upon such stock, with any interest received upon the moneys so paid as dividends, and also the amount, if any, found due from the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company upon the accounting hereinbefore provided for, or less the amount, if any, found due

from the Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company, upon the said accounting, if upon such accounting there shall be found to be due any sum from the said Anaconda Copper Mining Company; and the said Alice Gold and Silver Mining Company shall also pay to the said Anaconda Copper Mining Company the amount of the indebtedness assumed and paid by the said Anaconda Copper Mining Company, with any interest thereon paid by the said Anaconda Copper Mining Company, at the rate due and paid, and interest at like rate from and upon any payment by it made.

If, upon the sale to be made by the said Special Master, no responsible bidder who has complied with the terms aforesaid, shall offer for the said property a sum greater than the amount of consideration for the transfer of said property to the Anaconda Copper Mining Company, to be determined as hereinbefore provided, the said sale and transfer of the said property and assets of the said Alice Gold and Silver Mining Company, complained of in the complaint in this action, shall be affirmed and held to be in all respects valid, but in that event any of the complainants herein, and other stockholders of the Alice Gold and Silver Mining Company entitled to the benefit of this decree and who shall appear herein within sixty days from the date hereof and on notice to defendants prove their right thereto, and who within thirty days after said sale date surrender their

stock in the Alice Gold and Silver Mining Company as hereinafter provided, who may care to surrender the stock in the Alice Gold and Silver Mining Company owned by him or them, as hereinafter provided, and to receive in lieu thereof, in cash, his proportion of the purchase price paid by the Anaconda Copper Mining Company for said property, shall file notice of such election in writing herein within 60 days from the date hereof; and thereupon, and within 30 days after said sale date, the said Anaconda Copper Mining Company shall pay to the said Alice Gold and Silver Mining Company an amount of money equal to the proportionate shares of the said sum of \$1,500,000.00, the value of said Anaconda Copper Mining Company's stock, as proportionately belongs to the stockholders so electing to surrender their stock (that is to say, such proportionate part of said \$1,500,000.00 as the stock owned by such stockholders so electing to surrender, bears to the entire amount of stock of the said Alice Gold and Silver Mining Company, viz: 400,000 shares). Whereupon, the said Alice Gold and Silver Mining Company shall duly endorse and deliver up to the said Anaconda Copper Mining Company certificates for such part of the said thirty thousand shares of stock of the said Anaconda Copper Mining Company, as the amount of such Alice Gold and Silver Mining Company's stock, so surrendered by its stockholders so electing bears to the entire capital stock of the said Alice Gold and Silver Mining

Company; and the moneys so paid by the defendant Anaconda Copper Mining Company to the defendant Alice Gold and Silver Mining Company, together with a like proportion of the dividends and interest thereon received by said Alice Gold and Silver Mining Company upon the 30,000 shares of said Anaconda Copper Mining Company stock, shall be by said Alice Gold and Silver Mining Company paid to the said stockholders so electing to surrender their Alice Gold and Silver Mining Company stock, upon their duly endorsing and delivering the certificates for such stock to the said Alice Gold and Silver Mining Company, the said moneys to be paid to said Alice Gold and Silver Mining Company's stockholders so surrendering their stock, according to their proportionate shares of the total capital stock of said Alice Gold and Silver Mining Company; and upon such payment to said Alice Gold and Silver Mining Company's stockholders, the stock so surrendered shall be adjudged to have received its proportionate and distributive share of the capital of said Alice Gold and Silver Mining Company.

The Special Master shall promptly report his proceedings and results of the sale to the court, and any sale made shall be subject to confirmation by the court, the purchaser to pay the balance due upon said sale to the Special Master within 30 days after any such confirmation.

In the event of a sale of the properties of the said Alice Gold and Silver Mining Company by the

Special Master, above provided for, and the execution and delivery of a deed to the said purchaser, the said Master shall pay over the proceeds of said sale, less the cost of such sale, including the compensation of such Special Master, hereafter to be fixed, to the said Alice Gold and Silver Mining Company.

In the event that there shall be no sale by the said Special Master, and the transfer and sale to the Anaconda Copper Mining Company, heretofore made, shall be affirmed, the costs of such sale, including the compensation of the said Special Master, and all other costs and expenses and allowances in this action shall be paid by the party and in the manner hereafter to be determined by the order of this court. So likewise, if a sale be made.

Done in open court this 2 day of July A. D. 1915.

GEO. M. BOURQUIN,

Judge.

Filed and entered July 2, 1915. Geo. W. Sproule,
Clerk.

Thereafter, on February 4th, 1916, a Final Decree was duly entered herein, in the words and figures following, to-wit:

[*Same title of Court and Cause.*]

NO. 1086. IN EQUITY.

Final Decree.

This cause came regularly on for further and

final hearing before the court on the 31 day of January, A. D. 1916, upon the report of the Special Master, showing his acts and doings in pursuance of his appointment as Special Master by the interlocutory decree of this court, made and entered on the 2nd day of July, A. D. 1915.

And it appearing to the court from the report of said Special Master, so filed as aforesaid, that on the 17th day of August, 1915, and until and including the 2nd day of November, 1915, said Special Master caused to be published weekly, once each week, for twelve consecutive weeks, in the Wall Street Journal, a newspaper of general circulation, printed and published in the City of New York, State of New York; also in the Boston News Bureau, a newspaper of general circulation, printed and published in the City of Boston, State of Massachusetts, and also in the Butte Daily Post, a newspaper of general circulation, printed and published in the City of Butte, State of Montana (making twelve weekly consecutive publications in each of said newspapers in all), that being the period prescribed under said interlocutory decree, a notice of sale of all property of the Alice Gold and Silver Mining Company, described in and covered by said interlocutory decree, and that said notice of sale in all respects conformed to the order of this court and to said interlocutory decree;

And it further appearing that at the time and place designated in said notice of sale, that is to say, on the 10th day of November, 1915, at the

hour of 10 o'clock A. M. of said day, on the steps of the Federal Building, in the City of Butte, County of Silver Bow, State of Montana, said Special Master, after having read the aforesaid interlocutory decree of the court and the notice of sale at length, did then and there publicly cry the sale of said described property, in the presence of all persons then and there assembled, and that at said time and place no person or persons appeared to bid therefor, and that no one offered to make a bid in any sum or amount whatsoever therefor, and that no bids for said property, or any part or portion thereof, having been made at said time and place by any person or persons, the said Special Master then and there declared the facts as herein stated, and has made full return of his said proceedings under said interlocutory decree, from which report and return it appears to the court that said proceedings were had in strict conformity with said interlocutory decree, and were in all respects regular, and that at the sale of said property, so ordered by said interlocutory decree, there was no bid or bidders for the said property, and no person whomsoever bid a sum in excess of the consideration as the same has heretofore been found paid by the Anaconda Copper Mining Company to the Alice Gold and Silver Mining Company for the same, and said report and the said proceedings of the said Special Master are hereby confirmed.

NOW, THEREFORE, the court, being fully advised in the premises, and upon the whole case,

and in pursuance of the terms and provisions of said interlocutory decree, does hereby

ORDER, ADJUDGE AND DECREE, that the said sale and transfer of the mining ground and premises, and all the property of every nature whatsoever, of the said Alice Gold and Silver Mining Company, to the said Anaconda Copper Mining Company, had on or about the 27th day of May, 1910, the same being the sale and transfer complained of in complainants' bill of complaint, be, and the same is hereby, affirmed and decreed to be in all respects valid and binding, and the title thereto, now held by the said Anaconda Copper Mining Company, is adjudged and decreed to be a good and valid title.

AND IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that complainants do have and recover of and from the said defendants all their costs incurred in this suit, together with interest at the rate of eight per cent per annum from the date of this decree until paid.

DONE in open Court this 4th day of February, A. D. 1916.

GEO. M. BOURQUIN,

Judge.

Filed and entered Feb. 4, 1916. Geo. W. Sproule, Clerk.

WHEREUPON, said pleadings, process and decrees are entered of final record herein, in accordance with the law and practice of this court.

Witness my hand and the seal of said court at

Helena, Montana, this 4th day of February, A. D. 1916.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

[Endorsed] Final Record. Filed and Entered
Feb. 4th, 1916.

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

[Same Title of Court and Cause.]

Motion for Temporary Restraining Order and Injunction.

Affidavit.

United States of America,
District and State of Montana,
County of Lewis and Clark, ss.

T. J. WALSH being duly sworn says he is one of the solicitors for the complainants in the above entitled cause and as such verified the bill of complaint herein. That the source of the information of affiant in relation to the matters set forth in the bill of complaint are as follows:

As to the corporate capacity and date of organization of the Alice Gold & Silver Mining Company, lines 11 to 13 inclusive, page 2, affiant has before him a certified copy of the articles of incorporation of the said Alice Gold and Silver Mining Company. As to the corporate capacity and powers of the Anaconda Copper Mining Company, line 13, page 2 to line 12, page 5, affiant has before him an abstract to property situated in the city of Butte,

title to which passed through the said Anaconda Copper Mining Company, and in which is set forth a copy of the articles of incorporation of the said Anaconda Copper Mining Company setting forth the powers of the said corporation as in the bill set out.

As to the stockholdings of the complainants, lines 12 to 24, inclusive, page 5, the complainant Joseph S. Baer, who represented all of the complainants, gave to affiant, and affiant has before him, a copy of the proceedings of the meeting of the stockholders of the Alice Gold and Silver Mining Company, referred to in the bill of complaint, held on the 8th day of May, 1911, from which it appears that at said meeting the complainant Joseph R. Walker voted as the owner of 2110 shares; the complainant Peter Geddes, by J. R. Walker, proxy, 3110 shares; the complainant Eugene Blum, by W. J. Barrette, proxy, 400 shares; the complainant Isaac Blum, by W. J. Barrette, proxy, 1600 shares; the complainant Edward Blum, by W. J. Barrette, proxy, 1175 shares; the complainant Isador Baer, by W. J. Barrette, proxy, 200 shares; the complainant Joseph S. Baer, by W. J. Barrette, proxy, 500 shares; the complainant Alphons Dreyfoos, by W. J. Barrette, proxy, 600 shares; the complainants Dreyfoos, Blum & Company, by W. J. Barrette, proxy, 400 shares; the complainants Kurzman & Frankenheimer by W. J. Barrette, proxy, 200 shares; the complainants H. S. Everett, by W. J. Barrette, proxy, 700 shares;

Margaret Ann Meehan, by W. J. Barrette, proxy, 1050 shares.

As to the holdings of the Alice Gold and Silver Mining Company, line 25, page 5, to line 6, page 6, inclusive, affiant has before him a copy of the deed referred to in the bill of complaint taken from the records of Silver Bow County, Montana, in which is set forth the property conveyed. Affiant has personal knowledge of the location of the properties conveyed, and as to value, his information comes from statements made to him by the complainant Baer and other stockholders of the Alice Company.

As to the averments of the bill of complaint from line 7, page 6, to line 20, page 7, the facts therein set forth are matters of common knowledge and a part of the general history of the State of Montana, of which affiant has special knowledge by reason of participation in litigation involving many of the companies therein referred to.

As to the averments of the bill, lines 22 to 32 inclusive, page 7, the same are matters of general history and common notoriety in this connection reference is made to the "Copper Hand Book," Volume X, as follows: "The Amalgamated Copper Company was organized 1899 with the intention of controlling the copper industry of the world." The Copper Hand Book is a book issued annually as "a manual of the copper industry of the world," giving succinctly information concerning the organization and business of

all corporations engaged in the production or sale of copper. The work is found in public libraries generally and in the offices of most brokers dealing in mining stocks, and is generally referred to by parties investing or desiring to invest in such stock for information touching the business and affairs of companies of the character mentioned.

As to the averments found in the bill in relation to the powers of the Amalgamated Copper Company, line 32, page 7 to line 20, page 8, affiant's information comes from the report of the case of *McGinness v. Boston & Montana Consolidated Copper & Silver Mining Company*, 29 Montana, 428-448, and from the same source the averments from line 27, page 8 to line 13, page 9.

Of the averments from line 14, page 9, to line 2, page 10, affiant has personal knowledge except in relation to the relationship between the parties organizing the Red Metal Mining Company and the Amalgamated Copper Company, concerning which the averment is a matter of general history and common notoriety.

As to the price paid for the Heinze properties, lines 3 to 5 inclusive, page 13, affiant heard the sworn testimony of the said Heinze, who asserted that the amount paid was in fact some considerations in addition to \$10,500,00 in cash.

As to the averments of lines 5 to 8 inclusive page 10, the same is a matter of deduction from the facts set forth in the bill of complaint, as well as a matter of general history.

As to the averments of lines 9 to 23 inclusive, page 10, affiant's information comes from the Copper Hand Book and other similar publications.

The averments of the bill from lines 23 to 26 inclusive, page 10, are matters of deduction.

As to the averments of the bill from line 27, page 10 to line 11, page 12, the purposes actuating the proceedings therein set forth are matters of deduction.

The facts in relation to the transfer of the Clark properties to the Anaconda Copper Mining Company are matters of general history, as are likewise the other averments thereof. The transfers therein mentioned have generally been recorded and mention of the proceedings made in the public prints. In a circular letter issued by the defendant board of directors of the Alice Gold and Silver Mining Company it is recited as follows:

"Recently the stockholders of other companies, to-wit: the Boston and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company, Big Blackfoot Lumber Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company, Red Metal Mining Company, Diamond Coal & Coke Company and Parrot Silver & Copper Company, have taken steps to effect a consolidation of all of the property owned by them, by a sale of their respective properties to the Anaconda Copper Mining Company, for certain amounts of the capital stock of the Anaconda Copper Mining Company,

and the last named Company in pursuance of the same general plan, has offered to purchase all of the property of this Company, paying therefor 30,000 shares of the capital stock of the Anaconda Copper Mining Company."

As to the averments from line 12, page 12 to line 8, page 13, the purposes of the acts narrated are matters of inference.

The facts in relation to the acquisition by the Amalgamated Copper Company of a majority of the stock of the Alice Gold and Silver Mining Company or the Anaconda Copper Mining Company, or both, are derived from the Copper Hand Book and another publication in common use in the same way as the Copper Hand Book, known as Stevens' Manual. Also the copy of the proceedings of the stockholders' meeting of the Alice Gold and Silver Mining Company shows practically all of the stock save 200 shares voting in favor of the resolution of sale to have been voted by E. S. Ferry and L. O. Evans, proxies, and affiant knows the said L. O. Evans to have been since long prior to the date of the said meeting one of the attorneys of the Anaconda Copper Mining Company. Likewise affiant has before him a circular letter issued by the board of directors of the Alice Gold and Silver Mining Company, made defendants herein, under date of April 27, 1910, in which it is recited that in 1906 the Butte Coalition Mining Company acquired by purchase from the former owners a majority of the stock

of the Alice Gold and Silver Mining Company. The Butte Coalition Company is a holding company owning all of the stock of the Red Metal Mining Company, the John D. Ryan mentioned in the bill of complaint being the vice-president, and J. W. Allen, another director of the Alice Gold and Silver Mining Company, being the secretary thereof, and the said company owning all of the stock of the Red Metal Mining Company, whose property, as herein set forth, was, together with the properties of the other companies operating in the city of Butte and referred to in the bill of complaint transferred at or about the same time to the Anaconda Copper Mining Company in exchange for stock of the Anaconda Copper Mining Company.

As to the averments of the bill from line 10, page 13, to line 25, page 14, the purposes as therein set forth are matters of deduction. As to the facts recited ~~affiant's~~^{affiant's} information comes from the circular letter calling the said meeting and from the copy of the minutes of the proceedings had thereat as hereinbefore set forth.

As to the averments of the bill from line 25, page 14, to line 4, page 15, affiant's information comes from statements made to him by the complainant Baer and other stockholders of the Alice Gold and Silver Mining Company.

As to the averments of the bill, lines 5 to 23 inclusive, page 15, affiant has before him a copy of the deed from the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company, hereinbefore referred to.

As to the averments of the bill, lines 23 to 32, page 15, the averments are matters of general history and common notoriety as facts set forth in the reference works above mentioned. As to the averments of lines 1 to 5 inclusive, page 16, affiant has personal knowledge as to the averments of the relationship of the personal defendants other than the defendant Ryan, and affiant speaks upon general rumor and understanding as to the defendants Thornton and Allen, whom he finds, by reference to the manuals above referred to, are directors of the Red Metal Mining Company. As to the defendant E. S. Ferry, affiant speaks on information conveyed to him by complainants and upon the reasonable deduction to be drawn from the proxies voted by Ferry and Evans jointly at the meeting of the stockholders of the Alice Company referred to.

The averments of lines 6 to 8 inclusive, page 16, are matters of deduction.

As to the averments of lines 9 to 17, inclusive, page 16, affiant has been provided with a copy of the papers filed in the said proceedings by the attorneys for the complainants in the State of Utah.

As to the averments of the bill from line 18, page 16 to line 10, page 17, the information of affiant comes from the manuals above referred to.

As to the averments of the bill from lines 11 to 13 inclusive, page 17, the same is within the personal knowledge of affiant.

And further affiant sayeth not.

T. J. WALSH.

Subscribed and sworn to before me this 14th day of November, 1911.

J. R. WINE, JR.,

[Seal] Notary Public for the State of Montana, residing at Helena.

My commission expires Nov. 13, 1914.

Filed Nov. 14, 1911. Geo. W. Sproule, Clerk.

Praecipe showing no service upon Defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry.

[Note: It appears from Marshal's return at page 32 of this record that no service was made upon defendants named. No praecipe is on file giving this information.]

[Same Title of Court and Cause.]

Injunction.

The above entitled cause coming on to be heard, before the above entitled court, at Helena, Montana, on Wednesday, the 3rd day of January, A. D. 1912, the complainant appearing by its Solicitor, T. J. Walsh, Esq., and the defendants by their solicitor, C. F. Kelley, Esq., on the order to show cause herein why the defendants and each of them should not be enjoined and restrained, during the pendency of the above entitled suit, and until the further order of the court in the premises, from selling or otherwise disposing of any of the shares of the capital stock of the Anaconda Copper Mining Company received by the defendant, the Alice Gold and Silver Mining company from the said Anaconda Copper Mining Company in exchange for the property of the said Alice Gold and Silver

Mining Company, to-wit thirty-thousand (30,000) shares of the capital stock of the said Anaconda Copper Mining Company, and the parties having submitted their proof, and the court having heard the argument of counsel, and it appearing to the court that this is a proper case for an injunction, and that sufficient grounds exist therefor.

IT IS THEREFORE ORDERED that pending the final determination of this suit, and until the further order of the court, or the judge thereof, the defendants, the said Alice Gold and Silver Mining Company, John D. Ryan, W. D. Thornton, J. W. Allen, A. C. Carson and E. S. Ferry, and each of them, and their officers, agents and representatives, and each of them, be and they hereby are, commanded and enjoined to refrain from selling, transferring or otherwise disposing of the hereinbefore mentioned shares of the capital stock of the Anaconda Copper Mining Company, now held by the said Alice Gold and Silver Mining Company.

This order to become effective upon the complainants' filing with the clerk of the said court, a bond in the sum of Five Thousand (5000) Dollars, with conditions that complainants will pay all cost and damages which defendants may suffer, by reason of the said injunction order, if it shall finally be determined that they were not entitled thereto.

Dated this 9th day of July, A. D. 1912.

GEO. M. BOURQUIN, Judge.

Filed July 9, 1912. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Memorandum Order.

Hunt, J.

Peter Geddes et als., who are minority shareholders in the Alice Gold and Silver Mining Company, incorporated under the laws of Utah, and doing business at Butte, pray the court to annul a deed of all the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company, a corporation also doing business at Butte. The consideration for the transfer of the property of the Alice Company to the Anaconda Company is thirty thousand shares of the capital stock of the Anaconda Company, worth about \$1,300,000. The application for immediate consideration is that an injunction issue restraining the Anaconda Copper Mining Company from transferring the stock in question pending the litigation, to the end that if the facts upon final hearing should warrant the court in granting the relief prayed for, the stock received by the Alice Company as a consideration for its property may be restored to the Anaconda Copper Mining Company. Defendants resisted the application, and hearing was had.

Among the grounds relied upon by the complainants for a restraining order is this: That the sale is void because there is a substantial identity between the parties who negotiated and carried

out the sale and the parties who negotiated and carried out the purchase. The contention, stated in the briefest way, is that the defendant, the Anaconda Copper Mining Company, and the Alice Gold and Silver Mining Company, in which latter corporation complainants are shareholders, are both in practical effect directed or controlled by Mr. John D. Ryan, who it is proven was, at the time of the transaction involved herein, a director in both of said corporations and held the position of president of the Alice Gold and Silver Mining Company. The Alice Company was incorporated in 1881 with four hundred thousand shares of par value of twenty-five dollars for each share. At the time that the Alice Mining Company sold its property to the Anaconda Company, the majority of the stock of the Alice Company was owned by the Butte Coalition Company, a stockholding corporation holding stock in mining corporations in Butte. In this corporation also Mr. Ryan was a director at the time of the sale of the property of the Alice Company to the Anaconda Company. Furthermore, it appears that the Amalgamated Copper Company, also a stockholding corporation owns a majority of the Anaconda Copper Mining Company's stock, and about one-twentieth of the capital stock of the Butte Coalition Company, and that in the Amalgamated Copper Company Mr. Ryan was and is a director and vice president.

The Butte Coalition Company referred to was organized about 1906 to hold the majority of the

stock of the Alice Mining Company, heretofore referred to, and all of the stock of the Red Metals Mining Company. The Red Metals Mining Company was also organized about 1906, and became the owner of certain valuable copper mining properties in and about Butte which had for a long time theretofore been the subject of bitterly contested litigation between mining interests commonly regarded as belonging to or controlled by the Amalgamated Copper Company and those commonly known as belonging to or controlled by Mr. F. A. Heinze. Settlement of all the differences between the litigants in these contests was had about 1906, and transfer of title was made to the Red Metals Mining Company, and thereafter the Butte Coalition Company became the owner of the stock of the said Red Metals Company. It appears that certain of the stockholders of the Alice Mining Company, who sent proxies to vote at the meeting held at Salt Lake in May, 1910, to consider the transfer of the property of the Alice Company to the Anaconda Company, designated as one of their attorneys one of the counsel who had been and was then one of the counsel of the Anaconda Copper Mining Company. Again, the same counsel who acted for the Anaconda Copper Mining Company acted for the Red Metals Mining Company in harmonizing the relationships of the properties of the Red Metals Mining Company toward the properties of the Anaconda Copper Mining Company when the Amalgamated-Heinze liti-

gation ended in 1906. It also appears that Mr. John Gillie, general superintendent of mines of the Anaconda Copper Mining Company, has for some years been connected with the Alice Company, such connection having its origin in some agreement had by Mr. Gillie with Mr. Ryan, though no compensation was ever paid to Mr. Gillie by the Alice Mining Company. Mr. Gillie appears too to have acted in an advisory capacity to the Red Metals Mining Company.

The Alice properties, consisting of many quartz claims which are on the hill north of Butte, appear to be low grade, below the 1000 foot level. The Alice claims are situated just west from and contiguous to certain of the properties of the Anaconda Company. The main shaft is nearly 1500 feet deep. About 1893, the mines were flooded up to the 1000 foot level. The water was kept at that level until 1899, when a mill then upon one of the claims was closed down, and the water rose to the 200 foot level. Within the Alice properties there are veins,—some large, others smaller, with zinc and some lead, with apparently a large body of ore, much of which is refractory zinc. For years prior to the sale of the Alice property to the Anaconda Company, the Alice Company's interests were in charge of Mr. Buzzo. When advice was necessary with respect to mining matters, he consulted with Mr. Gillie, of the Anaconda Company, and when legal matters arose, he consulted with a gentleman who was also one of the

counsel of the Anaconda Copper Mining Company. There were some leases made upon the Alice property upon which certain royalty payments were made, which payments were deposited to the credit of the Alice Company, up to the time when the Anaconda Company took over the property. The receipts of the Alice Company were not sufficient however to take care of the expenditures. When the transfer was made to the Anaconda Company, the Alice Company was indebted to the Butte Coalition Company in about \$34,000. It can not be said that the Alice Mining Company was insolvent, though it appears to have been a losing corporation. However, no effect, other than the sale under investigation, appears to have been made to sell the property or to finance the company so that it could operate, or to dismiss the debt of \$34,000 due to the Butte Coalition Company, nor is there anything to show that the Butte Coalition Company was seeking to collect the debt. The property seems purposely to have been kept idle for years past. Nor does it appear that efforts to exploit the property were recently made. Surely a property which sold for the equivalent of \$1,300,000 would have had little or no difficulty in raising \$34,000 due to another corporation. While the Alice paid dividends in years gone by, since 1898 it has paid none. There is evidence tending to show that the main lode, which runs easterly through the Alice properties, is the Rainbow,—a large lode which runs north-

east and southeast. At the time that the Alice Company voted to transfer its property to the Anaconda, it was not properly equipped for any mining necessities, and doubtless before any extensive equipment should be put upon the Alice, exploration work would have to be done. For some years before the Butte Coalition Mining Company acquired the stock of the Alice Company, the stock of the Alice was depressed to a very low point, at one time even to twelve cents a share; but in 1906 and 1907 stock sold for five, six, and seven dollars a share. The operations of the company ceased about 1899. The Alice, which had yielded gold and silver, was not then regarded as a copper producer, but the general history of the Butte camp is that it is not until deep mining is carried on that copper ores become the principal product of the mines. That the Alice property is of great value is to be inferred from the value of stock agreed to be paid as fair by the Anaconda Company. That Mr. Ryan, managing director of the Anaconda Company, must have had some specific detailed knowledge of ore bodies in the Alice, their extent, character and value, which would warrant the payment of \$1,300,000 for the property, is an irresistible inference. We all know that the science of mining has been so far advanced within the last fifteen years that it enables engineers to express clear and definite opinion of mine values. Mere chances have given way to highly reasonable expectations based

upon exploitation, study of geological conditions, assays, mineralogy and improved commercial facilities for reducing ores.

In its practical effect, the proposition under investigation involves what may be called the absorption of the Alice Mining Company by the Anaconda Company. We must not confuse the proposition with that of a possible agreement to purchase the entire possible output of the Alice Company; that is to say, we must bear in mind that the proposed transaction here is not that of taking the possible product to mine which the Alice Company was organized, but to take all the property itself, and to leave the Alice Company only a stockholding corporation.

I do not think the evidence justifies a conclusion that at the time that the circular letter of April 27, 1910, to the stockholders of the Alice Company was issued, the object in view was to dissolve the Alice Company, inasmuch as the circular letter itself not only is wholly silent concerning dissolution, but expressly states the purpose of the meeting to be to submit to the consideration of the stockholders and to have them pass upon the proposed contract of sale between the Alice Company and the Anaconda Company, which proposition, if approved, would result in the sale and transfer of all of the property and securities of the Alice Company to the Anaconda Company, in consideration of the issuance and payment by the

Anaconda Company of thirty thousand shares of its capital stock.

Assuming that such a transfer would be valid, though approved by less than the unanimous consent of the stockholders, I can not think that this may be done against the objections of minority stockholders, unless it has been made to appear that such change is for the best interests of the Alice Company and its shareholders. Here, for instance, it is charged that the proposed transfer is for a consideration which is inadequate, in that the mines of the Alice Company are worth many times more than \$1,300,000, the value represented by the stock in the Anaconda Company which it is proposed to turn over to the stockholders of the Alice Company. Of course, it may be that upon the trial these averments of inadequacy of consideration will be held for naught. But suppose they are true, would not a court of equity prevent the consummation of the contract of sale? It seems clear that considering all the interrelated associations of the corporations heretofore referred to and of the directorships of Mr. Ryan in the several companies, minority shareholders have a right to call upon the courts to require the purchasing company through those of its directors who were also interested in the selling company, to disclose everything which they knew concerning the value of the Alice, the sources of such knowledge, the reasons for the sale, and the fairness thereof. Thus it devolves upon Mr. Ryan

to show that all knowledge which as a director of the Anaconda he obtained concerning the Alice properties was given to the directors and shareholders of the Alice Company.

Upon principle, contracts between corporations having a common director should be regarded very much as are contracts between individual directors and their corporations. Such contracts are not prohibited; nor are they *prima facie* void or fraudulent, but they are voidable, and it is a safe rule of conduct which imposes upon those who would sustain them the duty of showing clearly and satisfactorily that they are entirely fair and free from wrong. In the light of the complexities which have come to surround corporate transactions whereby interlocking directorates are frequently acting for corporations dealing with each other opposing interests are often involved. For example, plainly it is to the interests of the corporation which sells its property to receive as large a consideration as properly possible for it. Equally clear is it that it is to the interests of the buying corporation to buy for as small a price as it properly can. But if we have one director who is managing director acting for the selling concern who at the same time represents the buying concern, and who is a managing director in it, necessarily we have an apparent conflict of interests, a conflict that upon complaint by minority shareholders the law may become

concerned with and will inquire into with exceeding circumspection.

The books are not harmonious in their discussion of the better view to take of a transaction such as the evidence discloses the one under examination was. But after reading the many cases cited and others referred to by text-writers, we can safely approve of the doctrine stated by Thompson that such contracts while not void are voidable. He says:

"Contracts between corporations having a common directory are regarded by the courts very much with the same suspicion as contracts between individual directors and their corporations. Some courts have gone to the extent of holding that such contracts are *prima facie* fraudulent and void. But the more general as well as the ^{more} reasonable rule is that such contracts are not void but voidable. And the fairness of such contracts must be shown by clear and convincing proof and it must be made to appear that they are absolutely free from fraud. Contracts between corporations having a common directorate are voidable, although there was a quorum in each board of directors who were not directors in the other. The contracts of directors of two corporations are not void but voidable only." II Thompson on Corporations, Sec. 1242.

The same author also writes as follows, Sec. 1243:

"Contracts of consolidation, lease or sale are fre-

quently entered into between corporations where the directors of the one are largely interested in the stock of the other; or where one corporation owns a majority of the stock of the other contracting corporation; or where the stockholders of the two corporations are practically the same. Such contracts are governed by the same rules, substantially, as those where directors deal with themselves, or with the corporation. They are not necessarily void, but if there is actual fraud or if any undue advantage is taken, or the contract is unfair, the courts will give relief at the instance of the injured party. Thus, where a majority of the directors were interested in a contract adversely to the stockholders of the other contracting corporation, the contract was held illegal, and the fact that the directors made the contract openly did not validate it. So, minority stockholders may have a lease canceled which is made by officers and owners of a majority of the stock to another corporation."

My conclusion is that the burden is cast upon the defendants to satisfy the court by evidence from those who were in the best position to know all the facts and circumstances, that the whole transaction was fair and absolutely free from oppression or wrong. And clearly, until trial of the main action is had, it is just to all concerned that the stock should not be transferred by the Anaconda Company to the Alice Company.

Questions raised by complainants and not here

in discussed are reserved until the facts have been adduced upon trial.

Complainants' motion to file their amended bill is hereby granted.

Injunction pending litigation will issue, upon complainants' filing a bond in the sum of five thousand dollars, with conditions that complainants will pay all costs and damages which defendants may suffer by reason of injunction order if it shall finally be determined that they were not entitled thereto.

Filed June 29, 1912. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Stipulation.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for complainants and counsel for answering defendants, in the above entitled action, that all original maps introduced in evidence as exhibits and used in connection with the testimony of any witness in the above entitled action may be sent to, and filed with, the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and certified to said court in the original form in accordance with the rules of said court and be treated as original exhibits in said court; and without the necessity of printing the same in the transcript on the appeal of said action.

WALSH & NOLAN,
Solicitors for Complainants.

L. O. EVANS, W. B. RODGERS, D. GAY STIVERS,

Solicitors for Answering Defendants.

Filed Jan. 10, 1916. Geo. W. Sproule, Clerk.

*[Same Title of Court and Cause.]***Order.**

On motion of counsel for complainants, and pursuant to stipulation this day filed herein;

IT IS ORDERED, That all original maps introduced in evidence as exhibits and used in connection with the testimony of any witness in the above entitled action, be sent to and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to be used as original exhibits in said court in connection with the statement of the testimony in said case and without the necessity of printing said exhibits in the transcript on the appeal in said action.

Dated this 10 day of January, 1916.

, BOURQUIN,

Judge.

Filed Jan. 10, 1916. Geo. W. Sproule, Clerk.

*[Same Title of Court and Cause.]***[Decision.]**

This is a suit by minority stockholders of the Alice Company to avoid an executed sale of all Alice property to the Anaconda Company (defendant corporations) for stock of ~~both of~~ the latter.

It will suffice to say the grounds alleged are

that the Anaconda is of a copper combine in unreasonable restraint of interstate trade, and that to serve its purposes therein it secured control of Alice and against plaintiffs' dissent accomplished said sale for an improper and inadequate consideration. The answer is of denials and justification sufficiently hereinafter appearing. Disposition of said stock was enjoined pending suit. (197 Fed. 860.)

The court refrains from determining the issue involving the Sherman anti-trust act, because unnecessary in that all the relief warranted is otherwise awarded.

Furthermore, in ^{*Hilder*} ~~Silver~~ versus Refining Co. decided by the supreme court, Feb. 23, 1915, it is emphasized that for familiar reasons the act is not available, in attack at least, save as in it provided, viz, that at the suit of the government to dissolve and enjoin and punish conduct by it made unlawful, and at the suit of private parties injured by its violation to recover, the treble damages it awards. This general language is beyond the necessities of the decision and will not conclude the court in a case like this at bar.

Shawnee Compress company versus Anderson, 209 U. S. 423, indicates that in a proper case minority stockholders may enjoin and undo corporate acts *ultra vires*, because of violation of the Sherman act. For though said case involved a contract not fully executed and though the basis of the decision is somewhat vague, it must rest upon the

Sherman act to whatever extent interstate commerce was involved in that in respect thereto the said act monopolizes the field. And see *Boyd versus Ry. Co.*, 220 Fed. 180.

Coming direct to the issues upon which this decision is based the court finds that the price paid for the Alice property was substantially inadequate, and because thereof, of the methods of sale, of the nature of the consideration and its intended disposition, and of the dissent of Alice minority stockholders (plaintiffs), the court concludes that plaintiffs are entitled to relief.

At the time of sale Alice was dormant. Its long-time specific operations for silver had finally failed, and it was in debt; its plant destroyed; its mines closed and flooded; an expense and unprofitable for some 17 years next prior to the sale. Alice was ripe for dissolution and distribution of its assets to stockholders. Although it had large bodies of unworkable zinc-silver ores and much virgin ground, under such circumstances no rule of law obligates a corporation to borrow, if possible, necessarily large sums of money to pay debts and expenses or to enable it to rehabilitate its mines and experiment and explore, however desirous minority stockholders might be to assume the risk. For that is a matter of judgment in which the majority controls. By reason of the circumstances there was common-law power, co-extensive with any possibly given by statutes or articles without unanimous consent

to sell all Alice property. This property consisted of about 140 acres of fairly compact mining ground, embracing three-quarters of a mile of the Rainbow, the great lode that first made Butte famous for silver. Its many claims contained other lodes and unexplored territory. Its known silver ores were exhausted, but it has large bodies of zinc-silver ores, the discovery of a process to reduce which was not hopeless at the time of sale nor now.

Though the Rainbow lode is without the copper section of the Butte district and is not known to contain copper ores of value, from a trace to above 1 per cent. of copper had been found in some indefinite places and extent in Alice.

Defendants' experts testify that in Alice copper is a remote possibility; plaintiffs' that it is a geological probability. The former are of opinion the price paid for Alice, 30,000 shares of Anaconda of a market value of \$1,500,000 and assumption and payment of all Alice obligations and debts indefinite in amount, was fair and liberal to Alice; the latter, that Alice was worth at least \$3,000,000, and one of them, Walter Harvey Weed, declares he would have advised against sale because of "unearned increment" from development and discoveries tending in Alice's direction, and that, at \$5,000,000 to bring to the producing stage Alice "is a very good gamble." Jno. D. Ryan testifies the price for Alice was arbitrarily fixed, "it had to be, it could not be otherwise," and Weed

inclines to the view that mining values are arbitrary. Ryan further testifies that "on a gamble" in 1906, having purchased control of Alice at the rate of \$600,000 for the whole, from the standpoint of Alice, he believes the sale to Anaconda for \$1,500,000 was a "very good trade and a very good profit;" and that since Anaconda's resources and not too-distant workings would enable it to more cheaply explore Alice at depth in the speculative hope of finding something, from the standpoint of Anaconda it was a justifiable purchase and Anaconda" could well afford to take the gamble involved." (Of course, when Ryan bought control of Alice its quotations immediately rose.)

It would serve little to detail the facts, circumstances and reasoning by which the parties arrived at their widely-different conclusions, for the fact remains that upon the gamble, inspired by possibilities or probabilities, hopes or expectations, Anaconda paid for Alice an arbitrary price of \$1,500,000 plus. If there is any reason to believe this was the limit, that an open field would not have produced a purchaser more optimistic and less conservative than Anaconda and who would have paid more, it is not apparent.

It is clear there is no market value for such properties. Their price is arbitrary. It is not alone the value in sight, but also all that hopes of valuable discoveries or ability to resell to the speculative public will inspire some one to pay; and this often involves more in the nature of the personal

equation than accurate knowledge or scientific attainment. Anaconda paid a large price, but, in view of the extent and history of Alice and of the district—the latter's tendency to confound experts by unexpected discoveries supporting the prospector's dictum that "ore is where you find it—" the price was not so large that it can be said it is clear there was no reasonable prospect of a larger price. Anaconda could *afford* to pay more than any other, but the question is, *did* it pay more than any other *would* have paid? And in view of the common directors of vender and vendee the minority stockholders were entitled to

* One of plaintiffs contributed 11000 shares of Alice to the Ryan purchase and immediately purchased more at a much higher price.

Because of common directors, the learned judge who granted the injunction held the burden was on defendants to clearly demonstrate the sale was fair, and the case was tried on that theory. This burden has not been sustained. It is not clear the price paid was substantially adequate, and so the court finds it was not.

It is impossible to reconcile the cases upon the law of common directors. See:

Cooke, Corporations, § 658 et seq.

Thompson, Corporations, §§ 1242, 1243.

Thomas vs. Ry. Co., 109 U. S. 522.

Leavenworth vs. Ry. Co., 134 U. S. 689, *where* -

The rule is a good one and general that ~~whenever~~ ever fiduciary relations exist and in discharge of duty there is conflict of interest, if the transaction is not void, as it often is, it is open to impeachment by the beneficiary, will be closely scrutinized by the court, and if the trustee does not make manifest its fairness, it may be set aside or other relief granted. Corporate transactions like this at bar ought to be subject to this rule. That the common directors were not a majority of either board is a difference in degree, but not in principle. They may have dominated the board. In both cases is divided duty, conflicting interest, possible impaired judgment of unknown effect, difficulty of proof and danger to stockholders. In either case inadequacy of price is unfairness and condemns without further inquiry in an attempt to determine whether due to corruption or honest but mistaken judgment unconsciously swayed by adverse interest. There is no safety otherwise.

The sale was incident to a consolidation of Butte copper properties and to all intents and purposes was by Butte Coalition to Amalgamated by reason of interlock and control in the relations of eight or nine corporations involved.

Ryan was vice president and director of Butte Coalition and president and director of Amalgamated, and he was president and director of Alice and director of Anaconda. B. B. Thayer was di-

rector of Butte Coalition and he was president and director of Anaconda. Not a majority of any board, the power and influence of Ryan and Thayer are obvious. It is fair to say, however, that though their private interest was not inquired into, and though their future lay with the quick and not with the dead of these corporations, there is nothing to inspire belief that they aimed at aught but fair bargaining, or that they designed injury to Alice and consciously abused their trust. Prejudice to Alice would be betrayal of Butte Coalition, organized by Ryan and of his associates and friends. Ryan knew less of Alice than was known to its stockholders from inspection and reports. He had not seen its flooded depths, but to one of plaintiffs they were familiar.

Some 2,000 feet from any Alice territory and in part within veins that may penetrate it, there was Anaconda incipient development of ore shoots and production of copper locally encouraging and known to Ryan but of little consequence in relation to Alice value and sale. Alice was idle when Ryan purchased control and at cost transferred it to Butte Coalition, and it so continued, but from no purpose but reluctance to then take the hazard of its financing and operation. It was more or less continuously worked in a small way by lessees and was open to examination and experiment upon its zinc-silver ores by any one. Therein was earlier failure of costly efforts, and during Butte Coalition's control of Alice there

were two extensive investigations by large zinc operators, both of whom reported adversely thereon. The magnitude of the price paid for Alice does not warrant suspicion; otherwise the larger the price, the greater the suspicion, neither logic nor law.

However, common directors and inadequacy of price invoke the rule aforesaid. Additional ground for relief is that the transaction was not a sale, but a swap. One year thereafter proceedings were instituted to dissolve and distribute the stock to Alice stockholders.

Now Alice had not capacity to acquire corporate stock save under exceptional circumstances—that disposition of its property was of urgent and immediate necessity, and that no cash purchaser was available or that by trade a substantially larger sum could be realized, or the like—absent here. It is of the contract between corporations and their stockholders that any sale of all corporate property to distribute proceeds to stockholders shall be for money, the ultimate measure of value. A stockholder is not bound to accept anything but money for his equitable share of corporate property nor bound to permit a sale to be made for other chattels or goods to be distributed. Although Alice directors personally contemplated sometime dissolution of Alice and distribution of the Anaconda stock, not finding expression, in contemporaneous board action, it did not deprive

the taking of the stock of the quality of a permanent investment.

In respect to this latter ground for relief the cases are likewise in conflict, perhaps more in relation to the nature of than to the right to relief. See Cook, Corporations, § 671.

The instant case in principal resembles Mason against Pewabic Mining Company, 122 U. S.

* It will be remembered that Butte Coalition controlled Alice and was heavily interested in Anaconda by reason of a trade of its own mining property, that is the Red Metal property to Anaconda for 500,000 shares of Anaconda stock.

interested, so far as the rights of minority stockholders are concerned.

The rule of the Pewabic case is that any stockholder can insist that any sale of all corporate property upon dissolution shall be to the highest bidder for cash, and not to a corporation in which the majority are interested and for its stock at prices fixed by them. *

In the matter of relief to be granted, it appears plaintiffs own 12,560 shares of Alice of 400,000 shares outstanding. At the time of sale Butte Coalition owned about 234,000 said shares. The sale was ratified by 289,590 shares, and opposed by 5,500. The answer alleges that since this suit commenced,

Alice stockholders, anxious to receive their proceeds of the sale, were accommodated by Amalgamated exchanging Anaconda stock for Alice stock upon the basis of the sale, to the extent of 353,446 Alice shares, and which includes that of Butte-Coalition, but no proof was made thereof.

In any event, at least 34,000 shares of Alice are owned by others than the parties hereto and Amalgamated. A court of equity will model relief so that all parties in interest, whether before the court or not, will be protected. As before stated, the majority could lawfully sell Alice. The minority's right was a fair sale for money to the end that each thereof received in money the value of his equity in Alice property. Their present right is to sufficient relief to still accomplish that end.

The sale is not to be unconditionally set aside, however, for unless the property can be sold for more the interest of all the parties hereto and of those stockholders who neither appeared nor complained, require it shall not be disturbed. The method of the Pewabic case will be followed as near as may be. The value of the Anaconda stock paid for Alice was \$1,500,000. Some \$300,000 dividends thereon have since been paid. What was the amount of debts and obligations of Alice assumed by Anaconda does not appear. The decree will provide that a re-sale will be made and provided when made if no bid greater than the total proceeds to Alice as above be made, and pro-

vided thereupon defendants pay to plaintiffs and all those entitled thereto the money value of their equity in the proceeds of the sale heretofore made; that is, their proportionate share of the market value of the Anaconda stock at the time of the sale and of the dividends thereon, no re-sale will be made and the sale involved will be undisturbed. Thereby defendants will gain no advantage, plaintiffs will suffer no loss, and all Alice stockholders will receive their just dues.

Further proof will be received and orders made to enable the decree to be executed.

BOURQUIN, J.,

May 1, 1915.

Filed May 1, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Memo Decision.

From forms submitted, it is apparent both parties desired merely an interlocutory decree, and such the court signs. So too, it is apparent therefrom that both parties contemplate that in the event of no greater bid than the upset price, it shall be not optional with but obligatory upon the Anaconda to pay Alice stockholders entitled thereto in money, and the court adopts their language and view.

The court does not now attempt to define who is entitled to the benefit of these proceedings. Of course, when a fund comes into the hands of a court from corporate liquidation, all stockholders

share therein and are properly noticed to appear. But here is no such case. Here, if no sale is made all stockholders are not entitled to be paid in money, but only those who did not consent to or acquiesce in the sale or who are not otherwise estopped. It is their duty to come in, to in effect take a place as litigants, and surely not the court's to seek them out and solicit them to do so.

The suit is pending near four years, ample time for any of them to appear. At the same time in view of the nature of the suit, the special relief sought, and the perhaps unforeseen determination, it is believed a limited time should still be allowed for any stockholder entitled, to appear and prove his right to share in the relief granted. Although most authorities are that in a stockholders suit it must be alleged it is for the benefit of all similarly situated, that it is for common benefit here is inevitable and has been so treated throughout. If necessary (doubtless not) amendment is permissible. It is believed the time fixed is none too long to secure fair bidding, and that the terms are conducive thereto. Bidding should not be chilled by compelling bidders to in advance tie up such a large sum of money as here involved.

While confirmation of the sale, by the court, is provided for, no bidder can safely rely upon bids being permitted in court. See *Pewabic Case*, 145 U. S. 349.

The time is past when masters or receivers are enriched by sales. Here, the master's services

are merely ministerial and his compensation will be accordingly. Perhaps \$500, if no sale, and fair addition if sale. If a sale is made, the master's bond will be then fixed. As the decree does not create or transfer a title but merely annuls the sale and deed to the Anaconda, it is believed no deed is necessary from Anaconda,—this in view of the principle that decrees operate in personam and do not transfer title to realty. The value of the Anaconda stock heretofore made—\$1,500,000. shall stand. Curiously enough though a high valuation is favorable to complainants and unfavorable to defendants, the former seem to desire to reduce it, the latter to maintain it. Doubtless both see some advantage in their respective positions but the court does not.

Any modification or further orders necessary will be made.

BOURQUIN, J.

Filed July 2, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Stipulation

IT IS HEREBY STIPULATED AND AGREED, that touching the matters set for hearing by the interlocutory decree herein on July 19, 1915, the facts are as follows, to-wit:

FIRST: The amount of debts and obligations of the Alice Gold and Silver Mining Company assumed and paid by the Anaconda Copper Mining Company as a part of the consideration of the

transfer to said Anaconda Copper Mining Company of the property of said Alice Gold and Silver Mining Company was, and is, the sum of thirty-four thousand eight hundred twenty-seven and 92-100 dollars (\$34,827.92); that there has not been any interest paid or payable upon said debts or obligations;

SECOND: That the reasonable and necessary expenditures made by the Anaconda Copper Mining Company, upon and in connection with the properties transferred to it by the Alice Gold and Silver Mining Company in the maintenance, repair, care, operation and mining of said property, including payment of taxes and assessments legally levied thereon, exceed the amount realized from said properties and from all ores mined or extracted therefrom by it, its lessees or those acting under it in and by the sum of fifteen thousand seven hundred eighty-three and 15-100 dollars (\$15,783.15);

THIRD: That the amount of dividends paid by the Anaconda Copper Mining Company to the Alice Gold and Silver Mining Company upon the stock of the Anaconda Copper Mining Company received by said Alice Gold and Silver Mining Company, in consideration of the transfer of said property is the sum of three hundred thirty-seven thousand five hundred dollars (\$337,500.00), and the amount of interest actually received thereon by said Alice Gold and Silver Mining Company is the sum of sixteen thousand

two hundred eighty and 12-100 dollars (\$16,280.12), making the total of dividends and interest the sum of three hundred fifty-three thousand seven hundred eighty and 42-100 dollars (\$353,780.42);

FOURTH: That an inventory and sufficient description of all property transferred by said Alice Gold and Silver Mining Company to said Anaconda Copper Mining Company, and which, by the interlocutory decree of this court made and entered on July 2, 1915, is ordered to be offered for sale or re-sale, is as follows, to-wit:

That certain quartz lode mining claim, patented, known as the ALICE lode claim, being survey No. Four hundred and sixty-six (466), in Sections one (1) and Twelve (12), Township Three (3) North, Range Eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNA CHARTA lode claim, being survey No. Four Hundred and eighty-three (483), in Sections Six (6), Seven (7), one (1) and Twelve (12), Township three (3) north, Range seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the CURRY lode claim, being Survey No. Six hundred and seventy-four (674), in Section twelve (12), township three (3), north, Range eight west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the VALDEMERE lode claim, being Survey No. Four Hundred and sixty-seven (467), in Sections six (6) and seven (7), Township Three (3) north, Range seven (7), west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the ROONEY lode claim, being Survey No. Nine hundred and forty-seven (947), in sections one (1) and twelve (12), Township three (3) North, Range eight west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the HAWKEYE lode claim, being Survey No. Nine hundred and forty-eight (948), in section twelve (12), Township three (3) north, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the REEF FRACTION lode claim, being Survey No. Fourteen Hundred and thirty-five (1435), in sections one (1) and six (6), Township three (3) north, Ranges seven (7) and eight (8) west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNOLIA lode claim, being Survey No. Ten Hundred and sixty-two (1062), in section twelve township three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, pat-

ented, known as the BOSTON lode claim, being Survey No. Ten hundred and sixty-six, in Section six (6), Township three (3) North, Range seven (7) west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the COTTONWOOD lode claim, being Survey No. Nineteen Hundred and seventy (1970), in section six (6), Township three (3) North, Range seven (7) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the PLOVER NO. 1 lode claim, being Survey No. Eight hundred and five (805), in section one (1), Township three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the SAUKIE WEST lode claim, being Survey No. Eight hundred and fifty-seven (857), in section No. one (1) Township three (3), North, Range eight (8) west, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the SAUKIE EAST lode claim, being Survey No. Eight hundred and ten (810), in Sections one (1) and six (6), Township three (3) North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RISING STAR lode claim, be-

ing Survey No. Five hundred and sixty-one (561), in section No. Twelve (12), Township No. Three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain millsite, patented, known as the Alice Mill Site, being Survey No. Six hundred and seventy-four in Section Twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MIDNIGHT lode claim, being Survey No. Six hundred and seventy-six (676), in Section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented known as the WALKERVILLE lode claim, being Survey No. Nine hundred and fifty (950), in section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the PAY MASTER lode claim, being Survey No. Eleven hundred and eighty (1180), in Section Twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RAY WALKER lode claim, being Survey No. Seventeen hundred and seventy-

six (1776), in Section Twelve (12), Township three (3) North, Range Eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the WOOD YARD lode claim, being Survey No. Nineteen hundred and sixty-nine (1969), in Section one (1), Township three (3) North, Range eight (8) West of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the GUSSETT lode claim, being Survey No. Fifteen hundred and twenty-eight (1528), in Section one (1), Township (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BLUE WING lode claim, being Survey No. Six hundred and seventy-five (675), in Section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the NEPTUNE lode claim, being Survey No. Fifteen hundred and sixty-two (1562), in Section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided six-forty-eighths (6-48) interest in and to that certain quartz lode mining claim, patented, known as the THESUS lode claim being Survey No. Seventeen hundred and forty-

six (1746), in Section six (6) Township three (3) North, Ranges seven (7) and eight (8) West, of the Principal Meridian for Montana.

Also Lots seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), in Block four (4), lots three (3), four (4), six (6), seven (7), and eight (8), in Block five (5), and lots two (2), three (3) and four (4), in Block six (6), all in the North Walkerville Addition to the City of Walkerville, according to the plat and survey of said Addition on file in the office of the Clerk and Recorder of Silver Bow County, Montana.

Also Lots thirteen (13), fourteen, fifteen (15) and sixteen (16), in Block thirteen (13); all that portion of Lot seventeen (17) described as follows: Forty (40) feet deep on north end, and sixty (60) feet by eight (8) feet wide on west end of Lot seventeen (17) of Block Thirteen (13).

Also the north forty (40) feet of Lots eighteen (18) and nineteen (19) in Block thirteen (13).

Also that portion of Lot thirteen (13) in Block sixteen (16), being twenty (20) feet on the south end, and eighty (80) feet by four (4) feet wide on the west end of Lot three (3) in Block sixteen (16).

Lots four (4), five (5) and six (6) in Block Sixteen (16), and that portion being eighty-two (82) feet deep, extending the full length of the lot, by five (5) feet wide of the east portion of Lot six-

teen (16) in Block sixteen (16), and Lots seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four and twenty-five, in Block sixteen (16); Lots eleven (11) and twelve (12) in Block seventeen (17); Lots four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17), in Block eighteen (18); Lots sixteen (16), seventeen (17), and eighteen (18); in Block nineteen (19), all being in West Walkerville Addition to the City of Walkerville, Silver Bow County, Montana, according to the official plat and survey of said West Walkerville Addition, on file in the office of the County Clerk and Recorder of Silver Bow County, Montana.

Also all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, smelters, reduction works, refining works, and all other works, machinery, tools and implements whatsoever owned by the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also all water and water rights, reservoirs and reservoir rights, pipes, flumes, ditches, aqueducts and other water works and rights of way therefor, timber, timber rights, lands, easements and other real estate, improved and unimproved, owned by and belonging to the said Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also any and all other properties, real, personal and mixed, corporeal and incorporeal, legal and equitable choses in action and possession of every kind, character and description, belonging to the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company, and the interest of said Alice Gold and Silver Mining Company in any and all property in which it may have had any interest on said 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company.

This description and inventory is not intended to, and does not, include the thirty thousand (30,000) shares of the stock of the Anaconda Copper Mining Company, or any other property, received by the Alice Gold and Silver Mining Company in consideration of its transfer to the Anaconda Copper Mining Company of the property above described since none of said consideration was subject to the transfer from Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company.

All the above described property is subject to all leases, releases, rights of way and other easements granted, made or given by the Alice Gold and Silver Mining Company, or its predecessors in interest before the 27th day of May, 1910, and also to all vested rights obtained by others against the said Alice Gold and Silver Mining Company, or its predecessors in interest by legal proceedings or by

adverse possession or user prior to the 27th day of May, A. D. 1910.

This stipulation may be filed with the Clerk of the above entitled court by either party thereto and when so filed it shall have the same force and effect as though, upon a hearing touching the matters set to be heard before the court on the 19th day of July, 1915, said facts had been established by the testimony and found by the court, and the court may make such findings and orders thereon and in relation thereto and with like effect as it might have made had such facts been established by the testimony and found by the court, upon the hearing set by the interlocutory decree, hereinbefore mentioned, to be had on the 19th day of July, 1915.

Dated July 15, 1915.

WALSH & NOLAN,

Solicitors for Complainants.

L. O. EVANS, W. B. RODGERS and

D. GAY STIVERS,

Solicitors for Defendants.

Filed July 19, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Findings.

On reading and filing the stipulation herein entered into between the parties hereto under date of July 15, 1915, the court finds in accordance with said stipulation and in accordance with the findings of the court heretofore made, that the total

proceeds received by the Alice Gold and Silver Mining Company for and on account of the properties by it transferred to the said Anaconda Copper Mining Company on the 27th day of May, 1910, are and amount to the sum of one million nine hundred and four thousand three hundred ninety-one and 7/100 dollars (\$1,904,391.07), which sum is the consideration which has been received by the Alice Gold and Silver Mining Company for the said transfer.

The property referred to in the said decree, as appears by the stipulation hereinabove referred to, and which is to be offered for sale, pursuant thereto, is specifically described as follows:

That certain quartz lode mining claim patented, known as the ALICE lode claim, being survey No. Four Hundred and sixty-six (466), in sections one (1) and twelve (12), Township Three (3) North, Range Eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNA CHARTA lode claim, being survey No. Four hundred and eighty-three (483), in section Six (6), Seven (7), one (1) and Twelve (12), Township three (3), North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the CURRY lode claim, being survey No. Six hundred and seventy-four (674), in section twelve (12), township three (3) north,

Range eight west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the VALDEMERE lode claim, being survey No. Four hundred and sixty-seven (467), in sections six (6) and seven (7), township three (3) North, Range seven (7) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the ROONEY lode claim, being survey No. Nine hundred and forty-seven (947), in sections one (1) and twelve (12), township three (3) North, Range eight west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the HAWKEYE lode claim, being survey No. nine hundred and forty-eight (948), in section twelve (12), township three (3), North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the REEF FRACTION lode claim, being Survey No. fourteen hundred and thirty-five (1435), in sections one (1), and six (6), township three (3) north, Ranges seven (7) and eight (8) west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNOLIA lode claim, being survey No. ten hundred and sixty-two (1062), in section twelve, township three (3) North, Range

eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BOSTON lode claim, being survey No. ten hundred and sixty-six, in section six (6), township three (3) North, Range seven (7) west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the COTTONWOOD lode claim, being survey No. nineteen hundred and seventy (1970), in section six (6), township three (3) North, Range seven (7) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the PLOVER NO. 1 lode claim, being survey No. eight hundred and five (805), in section one (1), township three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the SAUKIE WEST lode claim, being survey No. eight hundred and fifty-seven (857), in Section No. one (1), Township three (3), North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the SAUKIE EAST lode claim, being Survey No. eight hundred and ten (810), in sections one (1) and six (6), township three (3)

North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the **RISING STAR** lode claim, being Survey No. five hundred and sixty-one (561), in section No. twelve (12), Township No. Three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain millsite, patented known as the **ALICE MILLSITE**, being Survey No. six hundred and seventy-four in section twelve (12), Township three (3) North, range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the **MIDNIGHT** lode claim, being survey No. six hundred and seventy-six (676), in section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the **WALKERVILLE** lode claim, being Survey No. nine hundred and fifty (950), in section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the **PAY MASTER** lode claim, being Survey No. eleven hundred and eighty (1180), in section twelve (12), Township three (3) North,

Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RAY WALKER lode claim, being survey No. seventeen hundred and seventy-six (1776), in section twelve (12), Township three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the WOOD YARD lode claim, being survey No. nineteen hundred and sixty-nine (1969), in section one (1), township three (3) North, Range eight (8) West of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the GUSSETT lode claim, being survey No. fifteen hundred and twenty-eight (1528), in section one (1) Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BLUE WING lode claim, being Survey No. six hundred and seventy-five (675), in section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the NEPTUNE lode claim being survey No. Fifteen hundred and sixty-two (1562), in section twelve (12), Township three (3) North,

Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided six-forty-eighths (6-48) interest in and to that certain quartz lode mining claim, patented, known as the THESUS lode claim, being survey No. seventeen hundred and forty-six (1746), in section six (6) Township three (3) North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also lots seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), in Block four (4), lots three (3), four (4), six (6), seven (7) and eight (8), in Block five (5), and lots two (2), three (3), and four (4), in Block six (6), all in the North Walkerville Addition to the City of Walkerville, according to the plat and survey of said Addition on file in the office of the Clerk and Recorder of Silver Bow County, Montana.

Also lots thirteen (13), fourteen, fifteen (15), and sixteen (16), in Block ~~thirteen~~^{thirteen} (13); all that portion of lot seventeen (17) described as follows: Forty (40) feet deep on north end, and sixty (60) feet by eight (8) feet wide on west end of lot seventeen (17) of Block thirteen (13).

Also the north forty (40) feet of lots eighteen (18) and nineteen (19) in Block thirteen (13).

Also that portion of lot thirteen (13) in Block sixteen (16), being twenty (20) feet on the south end and eighty (80) feet by four (4) feet wide on the west end of lot three (3) in Block sixteen (16).

Lots four (4), five (5) and six (6) in Block sixteen (16), and that portion being eighty-two (82) feet deep, extending the full length of the lot, by five (5) feet wide of the east portion of Lot sixteen (16) in Block sixteen (16), and lots seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four and twenty-five, in Block sixteen (16); Lots eleven (11) and twelve (12) in Block seventeen (17); lots four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17), in Block eighteen (18); Lots sixteen (16), seventeen (17) and eighteen (18) in Block nineteen (19), all being in the West Walkerville Addition to the City of Walkerville, Silver Bow County, Montana, according to the official plat and survey of said West Walkerville Addition, on file in the office of the County Clerk and Recorder of Silver Bow County, Montana.

Also all of the mines, mining ground, mining rights, claim and locations, quartz mills, concentrators, smelters, reduction works, refining works, and all other works, machinery, tools and implements whatsoever owned by the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also all water and water rights, reservoir and reservoir rights, pipes, flumes, ditches, aqueducts and other water works and rights of way therefor, timber, timber rights, lands, easements and other

real estate, improved and unimproved, owned by and belonging to the said Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also any and all other properities, real, personal and mixed, corporeal and incorporeal, legal and equitable choses in action and possession of every kind, character and description, belonging to the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company, and the interest of said Alice Gold and Silver Mining Company in any and all property in which it may have had any interest on said 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company.

This description and inventory is not intended to, and does not, include the thirty thousand (30,000) shares of the stock of the Anaconda Copper Mining Company, or any other property, received by the Alice Gold and Silver Mining Company in consideration of its transfer to the Anaconda Copper Mining Company of the property above described since none of said consideration was subject to the transfer from Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company.

Done in open court this 19th day of July, 1915.

GEO. M. BOURQUIN,

Judge.

Filed July 19, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]**Petition for Appeal and Allowance.**

The above named complainants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, Leopold Freund and Alice Frey, conceiving themselves aggrieved by the decree entered in the above entitled court, designated a preliminary decree, on the 2nd day of July, 1915, in the above entitled cause, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that an appeal be allowed, and that a citation issue, as provided by law, and that a transcript of the records and proceedings upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioners further pray that a proper order touching the security to be required of them to perfect their appeal be made.

T. J. WALSH,**C. B. NOLAN,****Solicitors for Complainants.**

[Order Allowing Appeal.]

The foregoing Petition is hereby granted, and the appeal is hereby allowed this 31 day of December, 1915, and the bond on appeal is hereby fixed at the sum of Three Hundred Dollars.

GEO. M. BOURQUIN,
Judge of the District Court of the United States,
for the District of Montana.

Due personal service of within petition for appeal made and admitted and receipt of copy acknowledged this 31st day of December, 1915.

C. F. KELLEY,

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan.

Filed Dec. 31, 1915. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Assignment of Errors.

Now come the complainants above named and say that the decree herein, designated as an interlocutory decree, is erroneous, and file the following assignment of errors committed or happening in said cause, upon which they will rely on their appeal from said decree:

I.

It was error for the court not to find that the transfer of the property of the Alice Gold and Sil-

ver Mining Company to the Anaconda Copper Mining Company was in violation of the Sherman Anti-trust Act.

II.

It was error for the court not to hold and find, and so decree, on the record and on the evidence submitted that the deed transferring the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company, was null and void on account of the transfer of the property being in violation of the Sherman Anti-trust act.

III.

It was error for the court to hold and find and decree accordingly that it was within the right and within the authority of the Alice Gold and Silver Mining Company to sell all of its property as against the protest and dissent of any or a minority of its stockholders.

IV.

It was error for the court to hold and find that the sale of the property of the Alice Gold and Silver Mining Company could be made, receiving as a consideration therefor stock of the Anaconda Copper Mining Company, thus transforming the Alice Gold and Silver Mining Company, which was a mining corporation, into a stockholding corporation.

V.

It was error for the court not to hold and find and so decree that the sale of the property by the

Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was absolutely null and void because of substantial identity of parties who negotiated and carried out the sale of the property, to the parties who negotiated and carried out the purchase.

VI.

It was error for the court to hold and find, and so decree, that there was not such substantial identity of parties negotiating and carrying out the sale of the property, and negotiating and carrying out the purchase of the property.

VII.

It was error for the court not to hold and find that the purchase of the property by the Anaconda Copper Mining Company was made in the pursuit of a purpose, for which the Anaconda Copper Company was carried on in behalf of the Amalgamated Copper Co., namely, to monopolize the production of copper in the Butte camp, and the sale of the same in the markets of the world in violation of the Sherman Anti-trust Act, and that the Anaconda Copper Mining Company, in the purchase of the property under consideration was influenced by that purpose and that object.

VIII.

It was error for the court to hold and find, and decree accordingly, that the sale of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company should stand, unless a higher price could be obtained for

same at public sale than was obtained from the Anaconda Copper Mining Company.

IX.

It was error for the court not to hold and find and decree accordingly, that the sale by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was absolutely and unconditionally null and void, so that the title to the property would, without condition, be re-vested in the Alice Gold and Silver Mining Company.

X.

It was error for the court to hold and find and decree accordingly, that a public sale of the property in question should again take place through the agency of a master appointed for that purpose, and that bidders should deposit certified checks, as provided for, or their bids should not be considered, and that unless their bids exceeded the price paid for the property by the Anaconda Copper Mining Company, they should not be considered, and that the sale of the property to the Anaconda Copper Mining Company should stand.

XI.

It was error for the court to hold and find, and decree accordingly, that a resale of the property should take place instead of holding and finding, and so decreeing, that the deed conveying the property to the Anaconda Copper Mining Company was null and void.

XII.

It was error for the court to hold and find, and so decree, that a resale of the property should take place, and that if a price, upon such resale, was not obtained in excess of the price paid for the property by the Anaconda Copper Mining Company, that the sale made to the Anaconda Copper Mining Company should stand.

XIII.

It was error for the court not to hold and find, and decree accordingly, that the sale of the property to the Anaconda Copper Mining Company was absolutely and unconditionally null and void.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

Due personal service of within Assignment of Errors made and admitted and receipt of copy acknowledged this 31st day of December, 1915.

C. F. KELLEY,

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan.

Filed December 31, 1915. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Peter Geddes, Joseph R. Walker, Joseph S.

Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, as principals, and the Massachusetts Bonding & Insurance Company, as surety, are held and firmly bound unto the above named, Anaconda Copper Mining Company a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, in the sum of Three Hundred (300) Dollars, for the payment of which well and truly to be made, we bind ourselves jointly and severally, and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

SEALED with our seals and dated this 31st day of December, 1915.

WHEREAS, the above named complainants have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered and entered in the above entitled cause in the United States District Court, for the District of Montana, on the 2nd day of July, 1915;

NOW, THEREFORE, The condition of this obligation is such that if the above named complainants shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make good

their plea, then the above obligation to be void; otherwise, to remain in full force and virtue.

It is expressly agreed by the Massachusetts Bonding & Insurance Company, the surety above named, that in case of a breach of any condition of this bond, the court may, upon notice of not less than ten days to said Massachusetts Bonding & Insurance Company, proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against said Company and award execution therefor.

Peter Geddes, (Seal) Joseph R. Walker, (Seal) Joseph S. Baer, (Seal) Henry S. Everett, (Seal) Margaret Ann Meehan, (Seal) Eugene Blum, (Seal) Isaac Blum, (Seal) Edward Blum, (Seal) Isador Baer, (Seal) Alphons Dreyfoos, (Seal) Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, (Seal) Leopold Freund, (Seal) Alice Frey, (Seal).

By WALSH & NOLAN,

Their Solicitors.

MASSACHUSETTS BONDING & INSURANCE CO.,

By SOL POZNANSKI,

Agent.

Attest:

J. R. WINE, JR.,

Attorney in Fact.

[Seal of Mass. B. & Ins. Co.]

The foregoing Bond on Appeal is hereby approved, both as to sufficiency and form, this 31 day of December, 1915.

GEO. M. BOURQUIN,

Judge of the District Court of the United States,
for the District of Montana.

Filed Dec. 31, 1915. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Citation on Appeal.

United States of America, ss.

The President of the United States to Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, and to C. F. Kelley, Esq., L. O. Evans, Esq., W. B. Rodgers, Esq. and D. Gay Stivers, Esq., their solicitors and counsel:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, in and for the District of Montana, wherein Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Com-

pany; Leopold Freund and Alice Frey, are the complainants, and the Anaconda Copper Mining Company; a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan are the defendants, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable William W. Morrow, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 31 day of December, 1915.

GEO. M. BOURQUIN,
Judge of the District Court of the United States,
for the District of Montana.

Due personal service of within citation made and admitted and receipt of copy acknowledged this 31st day of December, 1915.

C. F. KELLEY,
L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,

Solicitors for Defendants Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed Dec. 31, 1916, Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

**Praeipie Showing Portions of Record to Be Incorporated
Into Transcript on Appeal Taken in the Above En-
titled Cause Pursuant to the Requirements of Equity
Rule No. 75.**

1. Amended complaint of Complainants and Appellants;
2. Answers of the defendants and appellees, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan;
3. Motion for temporary restraining order and injunction;
4. Order granting temporary restraining order and injunction;
5. Memorandum decision allowing temporary restraining order and injunction;
6. Praecipe showing no service upon defendants, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry;
7. Condensed narrative statement of evidence adduced at trial;
8. Stipulation and order as to maps;
9. Memorandum decision of court;
10. Findings of court;
11. Stipulation as to facts;
12. Interlocutory decree;
13. Petition for the allowance of appeal and allowance of same;
14. Assignment of Errors;
15. Bond on appeal;
16. Citation on appeal;
17. Certificate of Clerk.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Appellants.

Due personal service of foregoing praecipe

made and admitted and receipt of copy acknowledged this 11th day of January, 1916.

C. F. KELLEY,
L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining pany, and John D. Ryan.

Filed Jan. 17, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

[**Memo. Decision.**]

The plaintiffs proved a cause of action and secured relief. Although not to the extent demanded and perhaps without profit, this relief makes them none the less the prevailing party and so in equity entitled to "costs from one party to another."

But attorneys fees are a different matter. Investigation to which tentative views must yield, discloses that in equity they are not costs *eo nomine*, but on occasion are allowed upon equitable principles out of some fund protected or recovered by the services for which they are claimed and which fund is in court for distribution. They are allowed out of the fund upon the well-understood theory that they are for services rendered not as a mere volunteer but for good reason by one interested party for the benefit of and to the profit of another interested party and for which

in equity and good conscience the latter ought to porportionately pay. The latter pays because he benefits by the other's agency, and ratifies the agency by taking the benefit. And the fund being in court, the court awards the fees as proper expense and costs, not from party to party generally, but from the party benefited to the party who rendered the service and paid the expense. This being the principle upon which such fees are allowable if the basic facts are absent no allowance can be made—the principle forbids allowance. In this suit while plaintiffs sue for the benefit of the Alice Company and the majority of its stockholders as well as themselves it is against the will of all others than themselves. All others were satisfied with the sale or at least content to let it stand. Plaintiffs' efforts resulted in the recovery of no property or fund but only in finally confirming an irregular sale of Alice property. There was no benefit, no profit to the Alice and the majority of stockholders but on the contrary there was actual loss and injury—delay in Alice administration and costs for Alice to pay decreasing every Alice stockholder's equity in Alice property. So it is apparent there is no ground upon which to compel Alice to pay plaintiffs' expense for attorneys to carry on litigation to Alice's detriment. The reason for an allowance here fails and so no allowance can be made. Against the judgment and will of Alice and the majority stockholders, plaintiffs set their judgment. They failed to ben-

efit any one save perhaps some special benefit to themselves. And so as in any case where one sues for his own benefit they must pay their attorneys. Any other rule would encourage suits to right harmless corporate irregularities of administration. Hence, no allowance for attorneys fees from the Alice to plaintiffs is made.

The decree herein is signed, but the court is of opinion that plaintiffs have a reasonable time after the decree becomes final upon appeal, within which to exercise their privilege of demanding money and not Anaconda stock for their Alice stock.

Filed Feb. 4, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Stipulation.

WHEREAS, the complainants in the above entitled action are desirous of prosecuting an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered herein on the 2nd day of July, 1915, and also from the decree made and entered herein on the 4th day of February, 1916; and,

WHEREAS, a praecipe has heretofore been filed herein showing the portions of record to be incorporated in the transcript on appeal from said decree entered herein on July 2, 1915, and another praecipe is to be filed herein showing the portions of record to be incorporated in the transcript on appeal from the decree signed and entered on Feb-

ruary 4, 1916, which said praecipe is practically identical with the praecipe already filed, and it is desired to avoid duplication in printing said transcript; and,

WHEREAS, it is deemed desirable for clearness and convenience to consolidate into one transcript the two records on appeal from the two decrees above mentioned;

NOW, THEREFORE, It is stipulated and agreed by and between the complainants and the answering defendants that the two records on the said two appeals, viz, the appeal from the decree signed and entered herein on July 2, 1915, and the appeal from the decree signed and entered herein on February 4, 1916, may be consolidated into, and printed as, one transcript which, when filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit may be considered and referred to on the hearing, consideration and determination of either or both of said appeals by the said United States Circuit Court of Appeals, with the same force and effect as though separate transcripts had been filed on each of said appeals, and that where any paper, file or portion of the record is mentioned in both praecipis, it shall only be necessary to print such paper, file or portion of the record in said transcript once, thus avoiding duplication.

IT IS FURTHER STIPULATED, That this stipulation be incorporated and printed in said transcript.

Dated this 31st day of March, 1916.

L. O. EVANS, W. B. RODGERS and
D. GAY STIVERS,

Solicitors for Answering Defendants.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Petition for Appeal and Allowance.

The above named complainants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, Leopold Freund and Alice Frey, conceiving themselves aggrieved by the decree rendered and entered in the above entitled court on the 4th day of February, 1916, in the above entitled cause, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herein, and they pray that an appeal be allowed, and that a citation issue as provided by law, and that a transcript of the records and proceedings upon which said decree was based duly authenticated may be sent to the Unit-

ed States Circuit Court of Appeals for the Ninth Circuit.

Your petitioners further pray that a proper order, touching the security to be required of them to perfect their appeal be made.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

[Order Allowing Appeal.]

The foregoing Petition is hereby granted, and the appeal is hereby allowed this 31 day of March, 1916, and the bond on appeal is hereby fixed at the sum of three hundred dollars (\$300.00).

GEO. M. BOURQUIN,

Judge of the District Court of the United States,
for the District of Montana.

Due personal service of the foregoing Petition for Appeal made and admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Assignment of Errors.

Now come the complainants above named and

say that the final decree herein, embracing the interlocutory decree so-called, is erroneous and file the following assignment of errors committed or happening in said cause upon which they will rely on their appeal from said decree:

I.

It was error for the court not to find that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was in violation of the Sherman Anti-Trust Act.

II.

It was error for the court not to hold and find, and so decree, on the record and on the evidence submitted that the deed transferring the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was null and void on account of the transfer of the property being in violation of the Sherman Anti-Trust Act.

III.

It was error for the court to hold and find and decree accordingly that it was within the right and within the authority of the Alice Gold and Silver Mining Company to sell all of its property as against the protest and dissent of any or a minority of its stockholders.

IV.

It was error for the court to hold and find that the sale of the property of the Alice Gold and Silver Mining Company could be made, receiving as

a consideration therefor stock of the Anaconda Copper Mining Company, thus transforming the Alice Gold and Silver Mining Company, which was a mining corporation, into a stockholding corporation.

V.

It was error for the court not to hold and find and so decree that the sale of the property by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was null and void because of substantial identity of parties who negotiated and carried out the sale of the property, and the parties who negotiated and carried out the purchase.

VI.

It was error for the court to hold and find and so decree that there was not such substantial identity of parties carrying out the sale of the property, and negotiating and carrying out the purchase of the property.

VII.

It was error for the court not to hold and find that the purchase of the property by the Anaconda Copper Mining Company was made in the pursuit of a purpose for which the Anaconda Copper Mining Company was carried on in behalf of the Amalgamated Copper Company, namely, to monopolize the production of copper in the Butte camp and the sale of the same in the markets of the world in violation of the Sherman Anti-trust Act, and that the Anaconda Copper Mining Com-

pany in the purchase of the property under consideration was influenced by that purpose and that object.

VIII.

It was error for the court to hold and find and decree accordingly that the sale of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company should stand, unless a higher price could be obtained for same at public sale than was obtained from the Anaconda Copper Mining Company.

IX.

It was error for the court not to hold and find and decree accordingly that the sale by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was unconditionally null and void; so that the title to the property would, without condition, be re-vested in the Alice Gold and Silver Mining Company.

X.

It was error for the court to hold and find and decree accordingly that a public sale of the property in question should again take place through the agency of a master appointed for that purpose, and that bidders should deposit certified checks, as provided for or their bid should not be considered, and that unless their bids exceeded the price paid for the property by the Anaconda Copper Mining Company they should not be considered, and that the sale of the property to the Anaconda Copper Mining Company should stand.

XI.

It was error for the court to hold and find and decree accordingly that a re-sale of the property should take place instead of holding and finding and so decreeing, that the deed conveying the property to the Anaconda Copper Mining Company was null and void.

XII.

It was error for the court to hold and find and so decree that a re-sale of the property should take place, and that if a price upon such re-sale was not obtained in excess of the price paid for the property by the Anaconda Copper Mining Company, that the sale made to the Anaconda Copper Mining Company should stand.

XIII.

It was error for the court to order and decree that the sale and transfer of the mining ground and premises and property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company had on or about the 27th day of May, 1910, be affirmed and be valid and binding.

XIV.

It was error for the court to hold and find and so decree that the Anaconda Copper Mining Company got good and valid title to the property of the Alice Gold and Silver Mining Company on account of the sale and transfer of said property made on or about the 27th day of May, 1910.

XV.

It was error for the court to hold and find and

so decree that the Anaconda Copper Mining Company as against the Alice Gold and Silver Mining Company is the owner of the mining ground and premises covered by the transfer of the 27th of May, 1910.

XVI.

It was error for the court to hold and find and so decree that the complainants were not entitled, as a portion of the costs in the pending litigation, to reasonable attorney's fees.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

Due personal service of within Assignment of Errors made and admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos,

Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, as principals, and the Massachusetts Bonding & Insurance Company, as surety, are held and firmly bound unto the above named, Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, in the sum of three hundred dollars (\$300.00) for the payment of which well and truly to be made, we bind ourselves jointly and severally and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

Sealed with our seals and dated this 31st day of March, 1916.

WHEREAS, the above named complainants have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered and entered in the above entitled cause in the United States District Court, for the District of Montana, on the 4th day of February, 1916;

NOW, THEREFORE, The condition of this obligation is such that if the above named complainants shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make good their plea, then the above obligation to be void; otherwise, to remain in full force and virtue.

It is expressly agreed by the Massachusetts

Bonding & Insurance Company, the surety above named, that in case of a breach of any condition of this bond, the court may, upon notice of not less than ten days to said Massachusetts Bonding & Insurance Company, proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against said company and award execution therefor.

Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund, Alice Frey,

By T. J. WALSH,

C. B. NOLAN,

Their Solicitors.

MASSACHUSETTS BONDING & INSURANCE CO.

By SOL POZNANSKI, Agent

Attest:

J. R. WINE, JR.,

Attorney in Fact.

[Seal of Mass. B. & Ins. Co.]

The foregoing bond is approved this 31st day of March, 1916, both as to sufficiency and form.

GEO. M. BOURQUIN,

Judge.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

*[Same Title of Court and Cause.]***Citation on Appeal.**

United States of America, ss.

The President of the United States to Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, and to C. F. Kelley, Esq., L. O. Evans, Esq., W. B. Rodgers, Esq., and D. Gay Stivers, Esq., their solicitors and counsel:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, in and for the District of Montana, wherein Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, are the complainants, and the Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan are the defendants, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and

why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable George M. Bourquin, Judge of the United States District Court, District of Montana, this 31st day of March, 1916.

GEO. M. BOURQUIN,
Judge of the District Court of the United States,
for the District of Montana.

Due personal service of within citation made and admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,
Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Praecipe Showing Portions of Record to Be Incorporated Into Transcript on Appeal Taken From Decree Entered February 4, 1916, in the Above Entitled Cause Pursuant to the Requirements of Equity Rule No. 75.

1. Amended complaint of complainants and appellants;
2. Answers of the defendants and appellees, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan;
3. Motion for temporary restraining order and injunction;

4. Order granting temporary restraining order and injunction;

5. Memorandum decision allowing temporary restraining order and injunction;

6. Praeceptum showing no service upon defendants, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry;

7. Condensed narrative statement of evidence adduced at trial;

8. Stipulation and order as to maps;

9. Memorandum decision of court;

10. Findings of court;

11. Stipulation as to facts;

12. Interlocutory decree;

13. Final decree and memorandum decision accompanying same;

14. Appeal papers on appeal from final decree, viz:

Petition for the allowance of appeal and allowance of same;

Assignment of Errors;

Bond on appeal; and

Citation on Appeal;

15. Stipulation as to consolidation of transcript, etc.

16. Certificate of Clerk.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Appellants.

Due personal service of foregoing praecipe

made admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Statement.

BE IT REMEMBERED That the above entitled action came regularly on for trial and final hearing before the Honorable George M. Bourquin, Judge of the said court, on the 18th day of June, 1914, upon said cause being called for trial, T. J. Walsh, Esq. and C. B. Nolan, Esq. appeared as solicitors for the complainants, and L. O. Evans, Esq. and W. B. Rodges, Esq. appeared as solicitors for the answering defendants. Thereupon the following proceedings were had and done and the following evidence and none other was introduced, to-wit:

(By MR. WALSH.)

Sometime in the month of February, 1911, an application was heard before the court, Judge Hunt presiding, for a provisional injunction restraining the Alice Gold & Silver Mining Company pending the determination of the action from disposing of the thirty thousand shares of stock of

the Anaconda Copper Mining Company, which it received in exchange for the property in order that on the final hearing, that should a decree be awarded in favor of the Alice Gold & Silver Mining Company, it would have the thirty thousand shares of stock of the Anaconda Copper Mining Company to return to that Company. Upon that hearing, both oral and documentary evidence was submitted to the Court, and it is agreed between counsel that the testimony thus submitted upon the preliminary application may be read in the record on this hearing with the same force and effect as though the witnesses were personally present and testifying.

Mr. Walsh: We desire to offer in evidence, if Your Honor please, the Articles of Incorporation of the Alice Gold & Silver Mining Company.

(The said Articles of Incorporation were thereupon marked "Complainants' Exhibit 1" and are in the words and figures following:)

Complainants' Exhibit 1.

**[Articles of Incorporation—Alice Gold & Silver
Mining Co.]**

STATE OF UTAH

EXECUTIVE DEPARTMENT.

Office of the Secretary of State.

I, Charles S. Tingey, Secretary of State of the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of a certified copy of the Articles of Incorporation of the
"ALICE GOLD & SILVER MINING COMPANY,"

Anaconda Copper Mining Co. et al. 239

filed in this office March 17th, 1880; also of amendment to said Articles of Incorporation filed June 21st, 1906, as appears on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah, this 27th day of December, A. D. 1911.

C. S. TINGEY,

Secretary of State.

[Seal]

By H. L. CUMMINGS, Deputy.

ARTICLES OF INCORPORATION
of the
ALICE GOLD & SILVER MINING COMPANY.

UNITED STATES OF AMERICA.

Territory of Utah,

County of Salt Lake, ss.

The undersigned, whose full names and places of residence are:

Samuel S. Walker,

Salt Lake City, Utah Territory.

Joseph R. Walker,

Salt Lake City, Utah Territory.

David F. Walker,

Salt Lake City, Utah Territory.

Matthew H. Walker,

Salt Lake City, Utah Territory.

Charles K. Gilchrist,

Salt Lake City, Utah Territory.

Henry W. Lawrence,

Salt Lake City, Utah Territory.

for the purpose of forming a corporation under Chapter IV, of Title XI, of the Compiled Laws of Utah, entitled "Of Incorporations for General Purposes," and acts amendatory thereof and supplementary thereto, do hereby associate and agree as follows:

I.

The name of the corporation hereby formed shall be: Alice Gold & Silver Mining Company, and said corporation is organized at the City and County of Salt Lake, in the Territory of Utah.

II.

The Corporation shall exist fifty (50) years, unless sooner dissolved according to law.

III

The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, mill sites, furnaces and reduction and refining works; to buy, sell, and exchange mineral ores and bullion; to buy, lease, construct and operate roads, tramways and freight and transportation routes—to facilitate the business of the Company; to appropriate buy and sell water, water rights and ways for conducting the same, and generally to do all kinds of business incidental to, connected with, or convenient for the management of a general mining business, in the Territory of Utah, Montana, Idaho, and in any State or Territory of the United States.

IV.

The principal place of business and general of-

office of the Corporation shall be at Salt Lake City, Utah Territory, but financial, transfer, and registry offices may be established at any other place or places in the United States and Territories, by the Board of Directors.

V.

The amount of capital stock of the Corporation shall be ten million (10,000,000) Dollars, divided into four hundred thousand shares of the denomination of twenty-five (25) Dollars each.

VI.

The amount of capital stock subscribed by the Corporators, parties hereto, is as follows:

	No. of Shares	Amount cents
Joseph R. Walker.....	399,500	\$9,987,500
Samuel S. Walker	100	2,500
David F. Walker.....	100	2,500
Matthew H. Walker	100	2,500
Charles K. Gilchrist.....	100	2,500
Henry W. Lawrence	100	2,500
	<hr/> 400,000	<hr/> \$10,000,000

VII.

The officers of the Corporation shall be: A Board of Directors of not less than nine (9) members; a President, a Vice-President, Treasurer and Secretary, and Assistant Secretary. The President, Vice-President and Treasurer shall be Directors; and to be eligible to any office, except Secretary and Assistant Secretary a person must be the owner in his own right, as shown by the books

of the Corporation, of not less than one hundred shares of capital stock.

VIII.

There shall be a meeting of Stockholders for the election of officers, on the second Tuesday of January 1881, and annually thereafter, but the time of holding annual meetings may be changed at any annual meeting of the Stockholders, and such elections shall be held at the office of the Company in Salt Lake City, Utah.

IX.

The term of office of all officers, except when a vacancy is filled, and except as provided in section 10, shall be one year, and until ——— successors are elected and qualified.

X.

Until the first annual meeting of the Stockholders and the election and qualification of officers, the following named persons shall be Directors. to-wit: Samuel S. Walker, Joseph R. Walker, David F. Walker, Matthew H. Walker, Charles K. Gilchrist and Henry W. Lawrence of Salt Lake City, and W. S. Dunn, W. B. Leonard & J. C. Babcock of New York City and the said Joseph R. Walker shall be President, Samuel S. Walker Vice-President, Matthew H. Walker, Treasurer, and Benjamin G. Raybould, Secretary, and Robert G. Lansing, Assistant Secretary.

XI.

The Board of Directors may fill vacancies in the Board or any of the offices of the Corporation until the next annual meeting, and except as other-

wise provided shall exercise all the powers vested in the corporation by law or by these articles.

XII.

The private property of the Stockholders shall not be liable for the debts or liabilities of the Corporation.

XIII.

The associates hereto and said Corporation propose to purchase, hold, and operate the following mining property, to-wit:

The Alice Lode and Mining claim as patented by the United States to Joseph R. Walker July 25th, 1877, said mining claim having been located by Rolla Bucher on the 2d day of January 1875 and the notice filed for record January 12th, 1875.

The Alice Mill Site near said Alice Lode located by Joseph R. Walker, July 16th, 1877, and the notice filed for record July 21st, 1877. The Rooney Lode and Mining claim located the 7th day of February 1878, and the notice filed for record Feb. 21, 1878. All the right, title and interest of Joseph R. Walker in the Curry Lode and mining claim, as described in the official Survey for patent, said claim being located January 15th, 1877 and the notice filed for record January 25th, 1877. Together with all the Buildings, Mill, Furnaces, improvements and appurtenances;—All of said properties are situated in the Summit Valley Mining District, in Deer Lode County and Territory of Montana. And we agree for ourselves and said corporation to purchase said properties and pay therefor four hundred thousand shares of the

capital stock of said corporation; and the said Joseph R. Walker, one of the subscribers hereto covenants and agrees that he holds the legal titles to said described properties in trust to convey the same, and that he will convey the same to said corporation, on its organization, and receive in full payment therefor said four hundred thousand shares of capital stock, to be issued by said corporation, to him and to his associate subscribers hereto, in the several amounts by each subscribed.

XIV.

The Board of Directors may enact By-Laws for the regulation and government of the business and affairs of the corporation.

XV.

The Capital stock of said company shall be non-assessable and no assessment shall be levied or collected on or from the stock or stockholders.

WITNESS our hands and seals, the sixteenth day of March, 1880.

Samuel S. Walker, (Seal.)

Joseph R. Walker, (Seal.)

David F. Walker, (Seal.)

Matthew H. Walker, (Seal.)

Charles K. Gilchrist, (Seal.)

Henry W. Lawrence, (Seal.)

 (Seal.)

(Seal.)

(Seal.)

In the presence of—The words “and assistant Secretary” twice intentional in Sec. VII and the

words "nor more than thirteen" in the same Sec. erased; and Sec. xii written over a covered erasure before signing.

E. Smith,
Theo. McKeen,
Edward W. Wiggins.

Territory of Utah,
Salt Lake County, ss.

Samuel S. Walker, Joseph R. Walker, David F. Walker, Matthew H. Walker, Charles K. Gilchrist & Henry W. Lawrence being each duly sworn, doth each for himself depose and say; I am one of the subscribers to the foregoing Agreement of Incorporation of the Alice Gold and Silver Mining Company; it is bona fide my intent, and the intent of the subscribers to said agreement, to commence and carry on the business mentioned in said agreement, and I verily believe that each subscriber and party to the said agreement is able to pay and will pay the amount of ^{the} ~~the~~ stock subscribed in the manner specified in said articles and agreement of Incorporation.

Samuel S. Walker,
Joseph R. Walker,
David F. Walker,
Matthew H. Walker,
Charles K. Gilchrist,
Henry W. Lawrence.

Subscribed and sworn to before me, March 16th,
1880.

E. SMITH, Probate Judge,
Salt Lake County, Utah Territory.

Territory of Utah,
Salt Lake County, ss.

On this sixteenth day of March 1880, before me Probate Judge in & for the County of Salt Lake, Utah, personally came Samuel S. Walker, Joseph R. Walker, David F. Walker, Matthew H. Walker, Henry W. Lawrence & Charles K. Gilchrist to me personally known to be the same persons named in and who subscribed the foregoing Agreement for the incorporation of the Alice Gold & Silver Mining Company, and they acknowledged that they and each of them executed said Agreement freely and voluntarily, and for the uses and purposes therein mentioned.

E. SMITH,
Probate Judge
Salt Lake Co. Utah.

*In the Probate Court in and for Salt Lake County,
Utah Territory. In the Matter of the Incorporation of the*

"ALICE GOLD AND SILVER MINING COMPANY."

The Agreement, of the Corporators and oath and acknowledgment thereto, having been filed and recorded, and the official bonds and oaths of office of the officers filed and approved; I order and direct that the clerk of this Court issue to said Corporation, under the Seal of the Court, a certificate thereof, as provided in Section 533 of the Compiled Laws of Utah, being Sec. 5 of Chapter

IV of Title XI of said Compiled Laws.

Dated March 16th A. D. 1880.

ELIAS SMITH

Probate Judge,

Salt Lake County, Utah.

UNITED STATES OF AMERICA.

Territory of Utah

County of Salt Lake, ss.

To the "Alice Gold and Silver Mining Company."

I, Dirk Bockholt, Clerk of the Probate Court in and for Salt Lake County and Territory of Utah, under the Authority and by the direction of the Honorable Elias Smith, Judge of said Court, do hereby certify; That the "Alice Gold and Silver Mining Company," has this day duly filed in my said office, the Agreement of Incorporation of said Company: Together with the oath and acknowledgment of four of the Corporators,—the official Bond and Oath of office of the officers thereof as required by the Act of the Governor and Legislative Assembly of the Territory of Utah, Chapter IV, Title XI, Compiled Laws of Utah Territory 1876, entitled "Of Incorporations for General Purposes," and all other laws amendatory to, or in aid thereof. All of which are this day approved by the said Probate Judge—and said "Alice Gold and Silver Mining Company" by virtue of the premises aforesaid, is hereby created and constituted a body corporate, with right of succession as specified in said Agreement of Incorporation.

And the said company is authorized to exercise all the functions, enjoy all the privileges of a cor-

poration and to transact all business of said corporation as specified in the said agreement of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, at my office in Salt Lake City, Salt Lake County, and Territory of Utah, this sixteenth (16th) day of March, A. D. 1880.

D. BOCKHOLT,

Clerk of the Probate Court,

[Seal] Salt Lake County, Utah Territory.

[Filed in the clerk's office Probate Court, March 16, 1880. D. Bockholt, Clerk.]

Territory of Utah

County of Salt Lake, ss.

I, DIRK BOCKHOLT, Clerk of the Probate Court in and for the County of Salt Lake and Territory of Utah, do hereby certify that the foregoing six (6) pages numbered from one (1) to six (6) inclusive, contain a full, true and correct transcript of the agreement of Incorporation, and the Certificate of Incorporation issued by the Clerk of said Court, and the order and direction of the Probate Judge of said County to said Clerk: in the matter of the Incorporation of the "Alice Gold and Silver Mining Company" on file and of record in my office.

WITNESS my Hand and the Seal of said Probate Court, at my office, at Salt Lake City, in said

County and Territory this sixteen (16th) day of
March A. D. 1880.

DIRK BOCKHOLT,

Clerk of the Probate Court of

[Seal.] Salt Lake County, Territory of Utah.

Territory of Utah,

County of Salt Lake, ss.

I, ELIAS SMITH, Judge of the Probate Court in and for the County of Salt Lake and Territory of Utah, do hereby certify that Dirk Bockholt, by whom the annexed and foregoing certificate and attestation were made and given, and who in his own proper hand writing has hereunto subscribed his name, and affixed his official seal, was at the time of so doing, and now is Clerk of the Probate Court in and for the County of Salt Lake and Territory of Utah, duly commissioned and qualified, to all whose acts as such clerk, full faith and credit are and ought to be given, as well in Courts of Jurisdiction, as elsewhere; and that the said Transcript certificate and attestation are in due form and made by the proper officer.

IN WITNESS WHEREOF, I have hereunto set my hand the sixteenth (16th) day of March in the Year of our Lord, one thousand, eight hundred and eighty (1880.)

ELIAS SMITH,

Probate Judge.

Territory of Utah,

County of Salt Lake, ss.

I, DIRK BOCKHOLT, Clerk of the Probate

Court in and for the County of Salt Lake and Territory of Utah, do hereby certify, that the Honorable Elias Smith, by whom the foregoing attestation was made, and whose genuine signature is subscribed thereto, was at the time of signing the same and still is, Judge of the Probate Court in and for the said County of Salt Lake, and Territory of Utah, duly commissioned and sworn, to whose acts as such Judge full faith and credit are due.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Probate Court at my office, at Salt Lake City, Salt Lake County, and Territory of Utah, this sixteenth (16th) day of March A. D. 1880.

[Seal.]

DIRK BOCKHOLT,

Clerk of the Probate Court in and for the County of Salt Lake and Territory of Utah.

[Filed in the office of the Secretary of Utah, this seventeenth day of March A. D. 1880.]

ARTHUR L. THOMAS,

Secretary of Utah Ter.

State of Utah,
County of Salt Lake, ss.

We, the undersigned, M. H. Walker, and L. H. Farnsworth, respectively President and Secretary of the ALICE GOLD AND SILVER MINING COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Utah, do hereby certify that, at a special meeting of the

stockholders of said Alice Gold and Silver Mining Company, convened pursuant to a resolution of the board of directors in accordance with the by-laws of said company and of the laws of the State of Utah, and held at the principal office and place of business of the company in the City of Salt Lake, Utah, on June 21, 1906, at ten o'clock A. M., the Articles of Incorporation of said company were amended by a vote representing more than a majority of the outstanding capital stock thereof, and that all of the stock represented at said meeting voted in favor of such amendments; that due notice of said meeting, as prescribed in Section 339 of the Revised Statutes of Utah of 1898, as amended by Chapter 94 of the Laws of Utah, 1903, had been given of said meeting, which said notice duly stated the nature of the proposed changes and amendments and the time and place of such meeting; and that such amendments are in the words and figures following, to-wit:

"RESOLVED, that the Seventh paragraph or article of the Articles of Incorporation of the Alice Gold and Silver Mining Company be amended, so that the same shall read as follows, to-wit:

"VII. The officers of the corporation shall be a Board of Directors of not less than five members, a President, Vice President, Treasurer and Secretary and Assistant Secretary. The President, Vice President and Treasurer shall be directors; and to be eligible to any office except Secretary and Assistant Secretary, a person must be the owner in his own right, as shown by the books of

the corporation, of not less than one hundred shares of the capital stock. Meetings of the Directors for the transaction of any business of the corporation may be held at the principal office of the corporation in the State of Utah, or at such place or places outside of the State of Utah, or elsewhere within such State, as the Directors may by resolution or by-laws provide."

Dated at Salt Lake City, State of Utah, this 21st day of June, A. D. 1906.

M. H. Walker, (Seal.)

President.

L. H. Farnsworth, (Seal.)

Secretary.

State of Utah,
County of Salt Lake, ss.

On this 21st day of June, A. D. 1906, personally appeared before me M. H. Walker, one of the signers of the above instrument, who duly acknowledged to me that he executed the same.

WILLARD HAMER,

[Seal.]

Notary Public.

My commission expires, May 16, 1909.

State of Utah,
County of Salt Lake, ss.

I. J. U. ELDREDGE, JR., County Clerk in and for the County of Salt Lake, in the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original Amendment to the Articles of Incorporation of the Alice Gold and

Silver Mining Company, as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 21 day of June A. D. 1906.

J. U. ELDREDGE, JR.,

County Clerk.

[Seal.]

By EVELYN EDDINGTON,

Deputy Clerk.

Endorsed: Alice Gold and Silver Mining Company.

AMENDMENT.

Filed and Certificate issued this 21 day of June 1906.

C. S. TINGEY,

Secreary of State.

Squires.

Mr. Walsh: I suppose you gentlement will admit the corporate capacity of the Anaconda Company, and that it has the powers indicated in the bill.

Mr. Evans: Yes.

Mr. Walsh: We then offer in evidence, if the Court please, certified copy of a deed, the purpose of which is to show the sale from the Alice Company to the Anaconda Company.

(Said Deed was marked "Complainants' Exhibit 4, and is in words and figures following:)

Complainants' Exhibit 4.

[Deed Alice Co to Anaconda Co., Dated May 31, 1900.]

THIS INDENTURE, made the 31st day of May, A. D., 1910, between the ALICE GOLD AND SIL-

VER MINING COMPANY, a Utah Corporation, party of the first part, and the ANACONDA COPPER MINING COMPANY, a Montana Corporation, party of the second part, WITNESSETH;

Said party of the first part, for and in consideration of the issuance and payment to it of Thirty Thousand (30,000) shares of the full paid capital stock of the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, assigned, transferred and set over, and by these presents does hereby grant, bargain, sell, convey, assign, transfer, and set over, unto the said party of the second part, and its successors and assigns forever, all of the following described property, real, personal and mixed, situate, in Silver Bow County, Montana, to-wit:

That certain quartz lode mining claim, patented, known as the ALICE Lode claim, being survey No. Four Hundred and Sixty-six (466), in Section one (1) and Twelve (12) Township Three (3) North, Range Eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNA CHARTA lode claim, being survey No. Four Hundred and Eighty-three (483), in Sections six (6), seven (7), One (1) and Twelve (12), Township three (3) North, Ranges seven (7) and Eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the CURRY lode claim, being sur-

vey No. Six Hundred and Seventy-four (674), in section Twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the VALDEMERE lode claim, being survey No. Four Hundred and sixty-seven (467), in sections six (6) and seven (7), Township three (3) North, Range seven (7) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the ROONEY lode claim, being survey No. Nine Hundred and forty-seven (947), in sections one (1) and twelve (12), Township three (3) North, Range eight West of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the HAWKEYE lode claim, being survey No. Nine Hundred and forty-eight (948), in section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the REEF FRACTION lode claim, being survey No. Fourteen Hundred and thirty-five (1435), in sections one (1) and six (6), Township three (3) North, Ranges seven (7) and eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNOLIA lode claim, being survey No. Ten Hundred and sixty-two (1062), in section twelve, Township three (3) North, Range

eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BOSTON lode claim, being survey No. Ten Hundred and sixty-six, in section six (6), Township three (3) North, Range seven (7) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented known as the PLOVER NO. 1, lode claim, being survey No. Eight Hundred and five (805), in section one (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the SAUKIE WEST lode mining claim, being survey No. eight hundred and fifty-seven (857), in section No. One (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the SAUKIE EAST lode claim, being survey No. Eight Hundred and Ten (810), in Sections one (1) and six (6), Township three (3) North, Ranges seven (7) and eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RISING STAR lode claim, being survey No. Five Hundred and Sixty-one (561), in Section No. Twelve (12), Township No. three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain millsite, patented, known as the Alice Mill Site, being survey No. Six Hundred and seventy-four, in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MIDNIGHT lode claim, being survey No. Six Hundred and Seventy-six (676), in Section (12), Township three (3) North, Range eight (8) West of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the WALKERVILLE lode claim, being survey No. Nine Hundred and fifty (950), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the PAY MASTER lode claim, being survey No. Eleven Hundred and Eighty (1180), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RAY WALKER lode claim, being survey No. Seventeen Hundred and seventy-six (1776), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the WOOD YARD lode claim, be-

ing survey No. Nineteen Hundred and Sixty-nine (1969), in Section one (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the GUSSETT lode claim, being survey No. Fifteen Hundred and twenty-eight (1528), in Section one (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BLUE WING lode claim, being survey No. Six Hundred and seventy-five (675), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the NEPTUNE lode claim, being survey No. Fifteen hundred and sixty-two (1562), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also an undivided six-forty-eights (6-48) interest in and to that certain quartz lode mining claim, patented, known as the THESUS lode claim, being survey No. Seventeen Hundred and Forty-six (1746), in Section six (6), Township three (3), North, Ranges Seven (7) and eight (8) West, of the principal Meridian for Montana.

Also Lots seven (7), eight (8), nine (9), ten (10), Eleven, (11), Twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17),

in Block four (4), Lots three (3), four (4), six (6), seven (7) and eight (8) in Block five (5), and Lots two (2), three (3) and four (4) in Block six (6), all in the North Walkerville Addition to the City of Walkerville, according to the plat and survey of said addition on file in the office of the Clerk and Recorder of Silver Bow County, Montana.

Also Lots thirteen (13), fourteen (14), fifteen (15) and sixteen (16), in Block thirteen (13); all that pr. portion of Lots Seventeen (17), described as follows: Forty (40) feet deep on North end, and sixty (60) feet by eight (8) feet wide on West end of Lot seventeen (17) of Block thirteen (13.)

Also the North forty (40) feet of Lots eighteen (18) and nineteen (19) in Block thirteen (13).

Also that portion of Lot thirteen (13) in Block Sixteen (16), being twenty (20) feet on the South end, and eighty (80) feet by four (4) feet wide on the West end of Lot three (3) in Block sixteen (16).

Lots four (4), five (5), and six (6) in Block sixteen (16), and that portion being Eighty-two (82) feet deep, extending the full length of the lot, by five (5) feet wide of the east portion of Lot sixteen (16) in Block sixteen (16), and Lots seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four and twenty-five, in Block sixteen (16); Lots eleven (11) and twelve (12) in Block seventeen (17); Lots four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12),

thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17), in Block eighteen (18), Lots sixteen (16), seventeen (17) and eighteen (18) in Block Nineteen (19), all being in the West Walkerville Addition to the City of Walkerville, Silver Bow County, Montana, according to the official plat and survey of said West Walkerville Addition, on file in the office of the County Clerk and Recorder of Silver County, Montana.

Said party of the first part does also sell, assign, convey, transfer and set over to the said second party all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, smelters, reduction works, refining works, and all other works, machinery, tools, and implements whatsoever, to the first party belonging, and wherever situate, lying or being, and for whatever purpose used, owned or possessed.

Also all water and water rights, reservoir and reservoir rights, pipes, flumes, ditches, aqueducts and other water works, and rights of way therefor, timber, timber rights, lands, easements, and other real estate, improved and unimproved, to the first party belonging, or wherever situate, lying or being; together with all and singular all rights and privileges possessed or enjoyed in connection therewith.

Also all right, title and interest whatsoever, legal or equitable, of the first party, of, in and to any and all mines, mining rights, lands, easements or other real estate whatsoever, and wherever situate, lying or being.

Also all works, plants, mills, tramways, machinery, furniture supplies, equipment, stock on hand, business, good will, and other property whatsoever and wherever.

Also all stock and shares of stock of or in other incorporated companies, to the said first party belonging, or in or to which it is in any way entitled, whether issued or not issued, and whether standing in or to be issued to or in the name of the said first party, or of any person or persons whomsoever, in trust for it, or for its use or benefit, either express or implied.

Also all bills receivable, accounts, moneys on hand, moneys due or to become due, by reason of any past sales or transactions; also all ores, minerals and metals, which have been or which are mined, in transit or in course of treatment and reduction; all matte, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining, and all precipitates and argentiiferous mud ready to be melted or parted.

Also, any and all other properties, real, personal and mixed, corporeal and incorporeal, legal and equitable, choses in action and possession, of every kind, character and description, wherever the same may be situated, belonging to the said first party, or in which the said first party is in any wise interested, or entitled to become interested.

And not in limitation of the foregoing, but in extension thereof, there is hereby sold and transferred, all, each and every property and property right, of any kind, character and description,

which the said first party is now or may hereafter become entitled to by virtue of any past transaction; also all contracts of every kind and description.

Said first party does hereby also grant to said second party the right to inspect, examine and at all reasonable times to take copies of all books of account, minutes, records, letters, copies of letters, files, and all other private books, documents and papers whatsoever, of the said first party; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, income, rents, issues and profits thereof.

TO HAVE AND TO HOLD all of the foregoing described property rights, privileges and appurtenances and to the said party of the second part, and to its successors and assigns forever.

The foregoing sale and transfer is made subject to the following conditions:

(a) The said second party agrees to take over, and does hereby take over, the said business and property of the said first party as a going concern; said sale and transfer to be made as of, and take effect from, the last hour of the 31st day of March, A. D. 1910; and to carry out and fully perform and discharge all contracts, obligations, and liabilities, of every kind, character and description, either in contract or in tort, and whether now or hereafter enforceable against the said party, and to undertake to and fully carry out and completely per-

form all valid executory provisions of any contract or contracts which may exist at the date of the transfer and delivery of all the property and assets of the said first party to the said second party.

(b) Also, subject to all existing leases, releases, rights of way and other easements, heretofore granted, made or given by the said first party, or its predecessors in interest, and also to all vested rights obtained by others against the said first party, or its predecessors in interest, by legal proceedings or by adverse possession or user.

IN WITNESS WHEREOF, the party of the first part has caused its corporate name to be hereunto signed by its President, and its corporate seal to be hereunto affixed, and attested by its Secretary; and the second party has caused its corporate name to be hereunto signed by its President, and its corporate seal to be hereunto affixed, and attested by its Secretary, the day and year in this instrument first above written.

ALICE GOLD & SILVER MINING CO.

By JOHN D. RYAN,

[Corporate Seal]

Its President.

Attest:

J. W. ALLEN,

Its Secretary.

ANACONDA COPPER MINING CO.

By B. B. THAYER,

[Corporate Seal]

Its President.

Attest:

C. F. KELLEY, Its Secretary.

State of New York,
County of New York, ss.

On this 1st day of June, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared John D. Ryan, known to me to be the President of the Alice Gold and Silver Mining Company, the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

Notary Public for the State of New York residing
at New York City.

My commission expires, March 30, 1911.

State of New York,
County of New York, ss.

On this 31st day of May, in the year 1910, before me, Henry Michaelis, a Notary Public in and for said County and State, personally appeared B. B. Thayer, known to me to be the president of the Anaconda Copper Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day

and year in this certificate first above written.

HENRY MICHAELIS,

Notary Public for the State of New York.

Residing at New York City.

My commission expires March 30, 1912.

Filed for record June 24th, A. D. 1910 at 45 Min.
past 10 o'clock A. M.

M. KERR BEADLE,

County Recorder.

By ED FITZPATRICK,

Deputy.

State of Montana, County of Silver Bow, ss.

I, M. KERR BEADLE, County Clerk and Recorder of said County, do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument, as recorded at page 75 in Book 98 of Deed Records of Silver Bow County, Montana.

Attest my hand and the seal of said Silver Bow County, hereunto affixed this 27th day of Dec. 1911.

M. KERR BEADLE,

County Clerk and Recorder.

By ED FITZPATRICK,

Deputy.

Thereupon pursuant to said agreement between counsel, the testimony of Messrs. Evans, Maroney, Goodale and Buzzo, given on the hearing on the application for a provisional injunction, was read in the record as follows:

[Testimony of L. O Evans, for Complainants.]

L. O. EVANS duly called and sworn as a witness

on behalf of the complainants, testified in substance as follows:

My name is L. O. Evans. I reside in Butte and practice law there. I am one of the attorneys for the Anaconda Copper Mining Company, having acted in that capacity since 1901. Prior to that time I was one of the attorneys for the Butte & Boston Consolidated Company. My name is mentioned in the proceedings here in connection with the name of D. Gay Stivers, who generally is one of the counsel of the Anaconda Company and the others. Capt. Stivers has been associated with the company longer than I. Mr. C. F. Kelley is chief counsel and vice-president of the Anaconda Company. Mr. Kelley has been with the company a little longer than I. He came to the Anaconda Company while I was still with the Boston companies. I do not know that Mr. Roy Alley sustains any official relation with the Anaconda Company. He is Mr. John D. Ryan's private secretary. I believe he is an attorney. I think he has worked for Mr. Ryan since 1904. Mr. E. S. Ferry, likewise, associated in these proxies, is a member of the firm of Richards, Richards & Ferry. He is the junior member of a firm of attorneys of Salt Lake. In the minutes of the proceedings of the stockholders meeting of May 8, 1911, his name is associated with mine as holding proxies for a large number of shares of stock at that meeting. I came to be associated with him in holding these proxies because the proxies were sent out by Mr. Allen, the secretary and treasurer of the Alice

Company, whose office is in New York. I am quite sure that the proxies came in the name of Mr. Ferry and myself. At one meeting, Mr. Stivers was unable to go and he was substituted, but the proxies came in this form from the secretary of company in New York. I think that it was Mr. Stivers who went from our office and attended the meeting of May 27, 1910, at which a transfer was authorized. I know Mr. Kelley did not go. He was in New York. I think Mr. Stivers was substituted. As regards who looked after the matter of the making of the transfer for the Anaconda Company why we all acted for both companies in connection with that—that is, preparing the deed. I think I prepared the deed in Butte after the meeting. I did not, however, go to Salt Lake. As to about how many shares Capt. Stivers represented by proxies held by him at that time I cannot tell you, but practically all of the stock except what you represented here appeared in all the meetings; that is to say, we carried proxies at that time for practically all of the stockholders excepting those represented here by you. I do not think there was a change in the holding of stocks from the time I attended and the time Capt. Stivers was there, but any way we held at that time proxies sufficient to carry the resolution and transfer, and knew that, as a matter of course, before Mr. Stivers went down. The proxies all came in the regular way—the same way they do in any matter of that kind. At the time the transfer was authorized—May 27, 1910—the directors were Mr. Ryan, Mr. Thornton, Mr.

Carson, Mr. Allen and Mr. Ferry. There has been a single change in the board of directors since then I think. Mr. Ryan was the president of the company at the time of the transfer and prior to that time, during the time the negotiations were going on which looked to the ultimate making of the transfer. I never got any salary directly from the Alice Company. I attended to some little matters for the Alice Company. I get one check from the companies associated with the Amalgamated Mining Company. My understanding is that all the companies contribute to that, but I do not know even just in what way they do—that is the amounts. The business of the Red Metal Company has been taken care of in my office since the Coalition Company was formed and began operations there, and we have had very little connection in our office with the Alice. There has been very little until this transfer. Richards, Richards & Ferry are their counsel, and they charge fees directly to the Alice Company. Mr. Howard Buzzo was a local man I have always known in connection with the business affairs of the Alice Company. In speaking about the Amalgamated Companies, I referred to the companies in which the Amalgamated is interested as a stockholder—the Boston and Montana Consolidated Copper & Silver Mining Company, Butte & Boston Consolidated Copper & Silver Mining Company, the Washoe Copper Company, the Colorado Smelting & Mining Company originally, succeeded by the Trenton Mining & Development Com-

pany. I think those are all the mining companies, and then they are interested in the Diamond Coal & Coke Company through others. As to the Hennessy Mercantile Company, originally, I think they had a small interest in the Hennessy Company, but I think that was taken over by Mr. Hennessy. We never regarded the Hennessy Company as one of the companies we had anything to do with. They may have had some stock when it was first formed, but it was taken out by Mr. Hennessy. As to the date when the Amalgamated first acquired any stock in these companies, my answer would be purely hear-say. The first I ever heard of the Amalgamated Copper Company was in 1899. Shortly after that time, at least the main part of the legal business of all these companies was transacted from our offices, but it was kept distinct in some ways. We never did until quite recently do away entirely with the line of demarkation in the different companies. We all acted interchangeably for all of the Amalgamated Companies and their legal business was all transacted in our offices, and that has been the condition of things since 1901. I cannot tell you who the directors of the Anaconda Company are. Mr. B. B. Thayer was the first president of the company. I understand Mr. Kelley is a director now and vice-president. Mr. John D. Ryan is president of the Amalgamated Company. The Coalition Mining Company was a stockholding company, holding a majority of the Alice Company and all of the Red Metal Mining Company, and

then I think it had some other interests. These companies were formed about 1906 after the purchase of the Heinze properties. The names of some of the corporations that operated the Heinze properties are the Montana Ore Purchasing Company, the Corra-Rock Island Mining Company, the Minnie Healy Mining Company and the Hypocaea Mining Company. These corporations were engaged in the copper mining business ostensibly. The Montana Ore Purchasing Company did some smelting. There was litigation between the Heinze companies and the Anaconda companies. That litigation was somewhat historical and it was a very bitter and protracted controversy. I spoke of the Red Metal Company, the Butte Coalition Company and the North Butte Company as the Cole-Ryan Companies. They are generally so designated. The Ryan whose name is thus associated is the same Mr. Ryan who is president of the Amalgamated and the president of the Alice. Since the transfer was thus made from the Heinze Company to the Red Metal Company, we have represented the Red Metal Company, as attorneys, Business was done in the same office as the business of the Anaconda Company and these other companies. I do not know of the Butte Coalition maintaining an office in Butte. Since that time I know of no litigation between the Red Metal and any of the companies designated as the Amalgamated Companies. The Red Metal seems to have got along quite harmoniously with the Amalgamated companies. I do not know of any liti-

gation and the same attorneys represented these companies since that time. At the time I went down to Salt Lake to attend this meeting, the minutes of the proceedings of which we have here, I was acting under instructions, of course, I think either from Mr. C. F. Kelley or from Mr. Allen. Mr. Kelley was in the East at that time. He was my superior, and whatever I did there, I did in carrying out the instructions thus received. I do not know that Mr. Allen, the secretary-treasurer of the Alice Company, gave any specific directions, but I knew in some way that it was the desire of the stockholders who sent those proxies to have it voted that way. I cannot tell you how I got it. I knew in some way the proxies came from Mr. Allen, the secretary; that Mr. Allen sent them either to Butte or Salt Lake, but whether he notified me how to act, or whether Mr. Kelley did, or in some other way, of course, I knew that was their purpose and desire—the stockholders who sent those proxies to be voted in that way. It is my understanding that the Butte Coalition owns a majority of the stock. I never had any direct knowledge of the Coalition at all. That was my understanding that the Coalition did own that majority. You see there had been no connection, the same way with the Amalgamated. There was no occasion for that coming up at all. The mining companies are operated in Butte, and I had a general understanding and rumor and everything about it, just as you have. The pay for such work as I do for the Red Metal Company

comes in the same way as for such work as I have done for the Alice Company. I did get one check from the Red Metal Company. My check now comes from the Anaconda Company since it acquired all these properties. I work on a monthly salary, of course, and am not paid by the piece of any piece work. The Anaconda Company has recently acquired the following properties of other companies: The Boston-Montana, Butte & Boston, Parrot, Washoe, Trenton, Red Metal, Alice and the Big Blackfoot. These transfers were made from those companies in April, May and June, 1910. As regards whether the same process has been gone through of the dissolution of these companies, the Boston-Montana has been dissolved, to my knowledge, in Butte. The Butte & Boston is a New York corporation. The Red Metal was a New York corporation. The Trenton is a New Jersey corporation, and whatever proceedings were had in those were taken East. The consideration for the transfer in each of these instances was stock in the Anaconda Company, and its assumption of liabilities, debts and things of that character. To accomplish these purposes, the stock of the Anaconda Company was increased from twelve hundred thousand shares at a par value each to one hundred and fifty-five millions. The Anaconda Company has, likewise, acquired certain of the Clark properties, viz, a portion of the property of the Colusa-Parrot Company, and the Original Consolidated, I think, was the last. The transfer took effect the last day of May or in

June, 1910, just about the same time these other properties were acquired, only these proceedings were under way long before that. It came to my attention considerably after that. The culmination in the deeds occurred about the same time. These Clark companies were engaged in mining mainly, copper ores, and in smelting.

Cross Examination.

The Alice Company has not had any litigation since my connection with it. As to whether it was carrying on or conducting any operations—there are a few leases up there. I do not think it would amount to anything at all. During the time of my connection with it, all that was necessary to look after was the mere matter of holding occasional stockholders' meetings, and I think they got into a dispute over a surface right there—a squatter there once or twice. I know the Alice was not operated. I have been over the ground and know they were not doing anything of any moment.

(Witness Excused.)

[Testimony of John G. Maroney, for Complainants.]

JOHN G. MARONY, duly called and sworn as a witness on behalf of complainants, testified in substance as follows:

My name is John G. Marony, and I am now living in Butte. From June, 1911, until a few weeks ago when I sent in my resignation, I was a director of the Amalgamated Company. I think the board consisted of seven members. Some of the other

members are Mr. Ben Thayer, Mr. William Rockefeller and Mr. Rodgers. Mr. John D. Ryan is president of the company and has been since the death of Mr. H. H. Rodgers about two years ago, I think. I think Mr. Ryan went on the board of directors of the Amalgamated about 1906. This company, as I understand it, is a holding company, engaged in holding the stock of copper mining companies and smelting companies. The capital stock is about one hundred and fifty-five millions as I remember it, most of these companies being in Montana. I understand that they own the principal part of the stock of the Anaconda Copper Company, and prior to the absorption of these other properties by the Anaconda Company, they held stock in the Butte & Boston, the Boston & Montana, the Washoe, the Parrot and I think the Red Metal. I do not know whether they owned the stock of the Butte Coalition. It is my impression that the Coalition owned all the stock of the Red Metal. That is merely my impression, and it is also my impression that the Red Metal owned stock in the Butte Coalition, but I do not know the proportion. I know, of course, that I am being asked as one of the directors of that company, and perhaps, I had better tell you something on that score. I was elected a director of the Amalgamated in June of this year. I resigned either in November or December. I have never seen any balance sheet of the Amalgamated Copper Company, except the general balance sheets that were published last June at their annual meeting. I have

never attended a meeting of the directors of the Amalgamated Company, so my information is not very extensive as to details. The offices of the Amalgamated are at 42 Broadway, New York City. The office of the Anaconda Company is on the same floor of the 42 Building. A great number of copper companies have that floor—the Green, the Green-Cannaea and Butte Coalition. I do not know if the Alice Company has an office on that floor.

Q. I notice, Mr. Marony, and I hand it to you for the purpose of refreshing your recollection, that Mr. Allen sends an envelope enclosing a proxy in which the office is referred to as at 42 Broadway, New York. Does that aid you in advising you now as to whether their office is there or is not there?

A. No, I know Mr. Allen's office is at 42 Broadway, and I know what room, but if it is the office of the Alice Company—I do not know if their name is on the door. Mr. Allen's office is in the same building and on that same floor.

The Green-Cannaea is generally denominated and spoken of as one of the Cole-Ryan properties. Prior to my election as a director of the Amalgamated Company, I should say I sustained no relation to that company or to any of the companies whose stock it held. I had no official connection in the transaction of the business of any of these companies. I have never been an employe, or received a dollar in salary from the Amalgamated Company or any of its constituent companies, so

I have only been a volunteer. I have been president of the Daly Bank & Trust Company. I haven't been drawing any salary from them for sometime—they got cold sometime ago. I occasionally had a part, advisory or otherwise, in these companies for many years, going back to Mr. Daly's time. I had been a stockholder more or less all the time in the Amalgamated and am now. Mr. Ryan was made managing director in 1904. I sometimes received suggestions in regard to the business or operations of these companies from various people connected with the concerns, including Mr. Ryan, whom I always looked upon as the boss of the works. I should say the actual operations in Butte had been conducted under his immediate direction since he became managing director in 1904. It is true that as the president of the bank there, I kept myself fairly well informed of the production of the camp and these various companies from time to time. I cannot give you any idea of the total production of copper in the United States in 1899. In round figures the total production of copper in the United States in 1910, I should say was about one million three hundred thousand pounds—hold on, the production of copper in the world for the year 1910 was about two million pounds. Now, the production of the United States was about one billion two hundred million pounds, I think. Of that I would say the Butte camp produced two hundred and thirty millions. The Engineering and Mining Journal gives the Butte production for 1910 as two

hundred and thirty-eight millions. I would say that is substantially correct. The only other company producing copper in Butte that I can recall offhand is the East Butte running the Pittsmount smelter, no, pardon me, the Tuolomne is quite a producer. I do not know whether this Ballaklava has got around to making copper or not. The zinc, the Butte & Superior makes copper and the Clark mines were shut down because of a fire. As to the proportion contributed by these concerns, the East Butte might produce ten or fifteen million pounds a year and the Tuolomne, I think, about the same.

(By THE COURT):

What do the figures show as the relative proportion of the production of copper in Butte toward the total production of copper of the United States?

(By MR. WALSH):

A billion, eighty-six million in the United States—two hundred and eighty-eight million in Butte.

About one-fourth. So far as my information will enable me to speak regarding companies outside of Montana, which are a part of the Amalgamated, I do not know of any unless it be the International Smelting Company, and they have no producing mines that I know of. They are engaged in smelting and refining in the State of Utah. They have a big refinery—I do not know—may be they sold that. Part of the Butte copper goes to the refinery at Raridan, New Jersey.

Some of the Boston-Montana copper used to go to Dollar Bay, a Michigan refinery. It goes there from the smelters—the Washoe smelter, so-called at Anaconda, and the Boston-Montana, so-called, at Great Falls. The Pittsmont is another copper smelter out on the flat east of Butte and operating now. Mention has been made of the acquisition of the Clark properties. The acquisition of these properties by the Anaconda Company was completed in the month of May or June, 1910. The Butte Reduction Works was a Clark smelter connected with the operation of these properties. The company leased that smelter to Mr. Clark and it burned up; that is, at least a substantial part of the works was destroyed a few months ago. After the transfer, Mr. Clark was using the concentrator only for the reduction of ores from the Elm Orlu and the Bover. I think the principal production was zinc, I do not know. There was a copper smelter in connection with the Heinze properties prior to the acquisition of them by the Red Metal located below his mines on the Butte hill. I think that principally fell to pieces. At the present time there is no smelter operating in Butte except the Pittsmont, and no other in Montana except the Washoe at Anaconda and the B. & M. at Great Falls, and the products of these smelters go to the refinery at Raridan or at Dollar Bay, Michigan. That course has been pursued for a long time. They undertook to run a refinery at Anaconda, but it was expensive. I think it was abandoned

even in Mr. Daly's time, and the ores then, most of them, went to Baltimore, that is, the products of most of these ores were refined in the East and all of these companies contributed the product of their ores to these two smelters that I spoke of. I remember some of their companies' copper went West directly from the B. & M. Works. They had quite a sale for copper in China a few years ago in the form that it comes from the concerns. After being thus refined in the smelters in the East it is sold wherever they can sell it. The copper business has not been very good. I hope it is improving a little. As I understand it, the copper produced by the Butte mines is sold by the United Metals Selling Company, a copper selling institution. There are three or four such in the United States, and I think nearly all the copper goes through the hands of one of these selling agencies, unless it is the copper of Dodge's properties. I think they sell that directly. Recently Mr. Ryan was president of the United Metals Selling Company, prior to that time, I think Mr. Brady. I think they sell between four hundred and five hundred million pounds of copper annually. It goes from the refinery to the purchasers throughout the country through directions from the selling company who accounts to its employers personally.

Cross-Examination.

I do not want to be understood as testifying

that the Amalgamated now or at any time held any of the Red Metal stock.

(By MR. WALSH):

We agree that all of the Red Metal stock is owned by the Butte Coalition.

(By MR. KELLEY):

It was. It is not now.

Regarding my impression that some of the Butte Coalition Company is owned by the Amalgamated—I remember in a vague way—I was in New York about the time Butte Coalition was formed, and there was some talk as to whether or not the Amalgamated would go in. I remember having some conversation with Mr. Ryan on the subject, and really I don't know whether they went in or not. I rather think perhaps they did not. I do not know but what somebody else took the stock they were going to take. The organization of the Butte Coalition Company was absolutely separate and distinct from the Amalgamated Copper Company, and as a matter of fact, the Amalgamated Company had absolutely nothing to do with the Butte Coalition Company at the time of its organization, and as far as I know the Amalgamated Copper Company has had absolutely nothing to do with the Butte Coalition Company since its organization. My understanding is that the Amalgamated did have a very small holding. As to whether the Amalgamated Company has ever been in a position to and has ever directed the properties of the Coalition Company or any of its subsidiary companies—in general in

so far as I know of the operations of the Coalition Company in Butte in the direction of affairs, much of it came from Mr. Tom Cole for a long time, who is the president of the North Butte Company, and I am not sure but that he used to be the president of the Coalition. He had much to do with the acquisition and purchase of the Butte Coalition. With my attention directed to the time when the Heinze property was sold, as I remember it, the properties were sold and the negotiations carried on in New York, and Mr. Cole is the man who dealt with him. I was not present. That is my idea. Mr. Cole has never been either an officer or director of the Amalgamated. He is the Mr. Cole I mentioned in connection with Mr. Ryan. So far as I know, the Butte Coalition properties, and its subsidiary companies have not been managed, directed or controlled by the Amalgamated, although I think Mr. Ryan has had a good deal to say about their affairs and business. The North Butte, which is entirely separate and independent from the Amalgamated, is a comparatively large copper producer. I do not wish to be understood as testifying that the Amalgamated was a stockholder in the International. I had that impression; that is all. I recall the old Heinze—the M. O. P. smelter. When I came to Butte the smelter was in bad physical condition and antiquated, and I understand by reputation and hearsay, that its inefficiency was the reason for its abandonment. Operations of the Butte Reduction Works was suspended because the smelter

was antiquated and inefficient—and business reasons. The ore was transported to the Butte Reduction Works from the Clark properties by hauling it on a trolley line and teams. I knew the location of the Gagnon, Stewart and Original mines. Prior to the time these properties were bought, the Butte, Anaconda & Pacific Railway Company operating between Butte and Anaconda had tracks in the vicinity of these mines. Ores from these mines are now transported by this railroad. It is cheaper to ship these ores to Anaconda for smelting at the Washoe plant than to transport them to the old reduction works for treatment there, because of the difference in efficiency. My answer concerning the amount of copper sold by the United Metals Selling Company was based merely on general reputation. There are three or four metal selling agencies in the United States. The Phelps-Dodge are the only institutions, as I understand, that sell their own copper. The reason for a metal selling agency is that it is almost necessary to have a large amount of copper at your disposal, have it at different places in the world, have it marketable and ready for delivery. The metals selling agency sells at the point of delivery. I would say it is necessary to have an organization that can be kept in constant touch with the conditions that affect the price of copper all over the world. It would be impractical and very difficult for independent or separate producers to maintain such agencies.

Redirect Examination.

Mr. Ryan and Mr. Cole dealt with Mr. Heinze, as I understand it, in the negotiations which led up to the sale of the Heinze properties. I think that Mr. Ryan and Mr. Cole organized the Red Metal Company and the Butte Coalition Company for the purpose of taking over those properties. When the properties were first taken over, I remember Mr. Cole had his North Butte man take charge of the properties, and he run them a considerable time and in recent years, they have been practically under the direction of Mr. Ryan, who has been in closer touch with them than Mr. Cole. I think Mr. Ryan has in recent years directed the affairs of the Butte Coalition and the Red Metal Company in Butte, and the same way with the North Butte Company—Mr. Cole has not been in Butte for a long time. I think a year ago last summer Mr. Cole was there since that time I think Mr. Cole and his associate, Mr. Caton, have been directing the affairs of the North Butte Company. I really do not know whether Mr. Ryan is associated with that company in that way. I do not recall if the North Butte has a New York office. I recall no litigation of any character between the North Butte Company and the Amalgamated since the time of its organization, nor with any of these Amalgamated Companies. I have an impression they had some arguments about ore bodies and some settlements, but it did not become so acute as to get into court. I do not know of any litigation with any other company operating in Butte

for the last five years since the end of the Heinze troubles except there was threatened litigation of some sort or talk of troubles or dispute of the Clark properties. I do not remember any suit, and I remember only this Ballaklava case. Well, I think the Tuolomne and the Amalgamated were in litigation with the North Butte and the Anaconda with the Ballaklava. That is the one I have just mentioned. I do not know of any litigation between the Anaconda and James Murray. The Butte Coalition, as I knew it, was run as a separate, independent company, the most of the stock being held by individuals scattered all over the country. I should think that right today in Butte there is held there fifty or sixty thousand shares of Coalition. I was a large holder in Coalition myself. Whether or not the Amalgamated has in the intervening years acquired or bought a lot of the stock, I do not know. As to the Heinze smelter, of course, it bore no comparison, either in extent or in equipment with either the Washoe or the Great Falls smelters. It seemed to have served Heinze's purpose as long as he was engaged in mining in Butte. The product of his mines went to that smelter, and the same way with Senator Clark—his Butte reduction works seemed to answer his purposes. I do not remember of Mr. Clark sending his ores to any of these smelters or to the Pittsmont. My understanding about the matter is that copper is sold at the point of delivery by the brokerage house selling it for the company or on its account, that has it to offer, but

really I do not know where the point of delivery is. Much copper is sold in London and much on the Continent. There has been much export of copper of late, and I should fancy that all of these selling agencies would have to have copper bought ready for delivery.

Q. And, of course, all over the United States?

A. Well, as a matter of fact in a sense, yes, along the seaboard particularly.

Recross Examination.

After the formation of the Butte Coalition, and with reference to its local manager at Butte, Mr. Cole superintended it from the North Butte. Mr. Arthur Carson had not been for a long time prior thereto connected in any way with the Amalgamated Copper Company or any of its subsidiary companies. In the early days he used to do work for Mr. Daly personally. The management of the Butte Coalition locally in Butte may have been, and probably is yet, distinct and independent from the management of the Amalgamated or any of its subsidiary companies, but I simply say that it is my impression that Mr. Ryan would have much to do with the policy of the company and his suggestions certainly would have great weight, and I won't say that Mr. Ryan undertook the direction of the local management.

Q. I understand that you mean, and all that you mean by your testimony is that Mr. Ryan as a large stockholder and possibly an officer—

A. He might be a director—I do not know.

Q. His influence and suggestions would have weight?

A. Yes, sir. His policy had, of course,—and his suggestions of course, had weight.

I know of no Amalgamated litigation with the Tuolomne Company, nor with the Butte & Superior Company or the East Butte Company, nor litigation in recent years with any of the Clark properties, nor with the North Butte Company nor the Davis-Daly Company.

Redirect Examination.

There was some litigation in the early days between the Clark companies and the Anaconda. That was the case of the Colusa-Parrot against the Anaconda. That is, the title as I remember it. It seems to me it was in 1898. Mr. Clark's smelter was becoming antiquated, and I think that had much to do with moving him to settle. The Davis-Daly Company that I mentioned is a producing company. I understand that they had had ore in commercial quantities at the Colorado. That is the reputation. Judging from what copper is selling at, I would hardly say it is in the prospecting stage. They claimed to have commercial ore bodies, and they undertook to get the Basin Reduction works in condition to get ready to handle it. They haven't been handling enough to pay any dividends. The amount is so insignificant that I could not give an idea in pounds or tons. It is not of much consequence; that would be my guess.

(WITNESS EXCUSED.)

[Testimony of C. W. Goodale, for Complainants.]

C. W. GOODALE, a witness duly called and sworn on behalf of the complainants, testified as follows:

My name is C. W. Goodale and I live in Butte. I am manager of the Boston-Montana department of the Anaconda Copper Mining Company. I was associated with the Boston-Montana Company sometime prior to its dissolution. I went with that company in March, 1898, I believe, and continued with it up to the present time. I began as superintendent of the smelter at Great Falls in 1898. Three and one-half years I held that position, and then I came to Butte as assistant manager and afterwards as manager. In those early years, 1898 and 1899, we got ores from the Boston-Montana mine at Butte for the Great Falls smelter. I do not think we got any from the Butte & Boston. They had a smelter of their own in Butte. In 1898, there was a smelter there belonging to Mr. Heinze. I think it was the Montana Ore Purchasing Company, and the Butte & Boston, I think we have already mentioned. The Colorado Smelting & Refining Company's plant. The Butte Reduction Works, and I believe the Parrot smelter was also opened in 1898. The Butte & Boston smelter took care of the ores of that corporation. There was ^{some} work done by the Colorado Smelter and Refining Company for Mr. Heinze—some concentrating. The Parrot treated its own ores. The Butte Reduction Works had a custom business that treated ores from the mines

belonging to Mr. Clark's group. There was no association between these various groups of companies in 1898. I think in 1898 the product—of these various corporations was handled by the officers of the Butte & Montana Company—by the treasurer. That was the headquarters of the company at that time. My recollection is that the chief parties in the managing and direction of its affairs in the Boston at that time were Mr. A. S. Bigelow, president, and Mr. Nelson or Mr. Ladd, treasurer, I do not remember which. I do not recall whether the product of the Great Falls smelter was shipped at that time. It was shipped according to the orders of the Boston office. The Boston-Montana Company has had an electric refiner ever since 1903, and a portion of its product was refined there and made into wire bar ready to be sold to the trade immediately. I do not recall whether in 1898 they were able to refine all their converted copper or whether some of it went East. I am sure some of it went East as converted copper. I think it was along about 1900 or 1901 that we first began to sell through the selling company, but still I could not say about that. In regard to the Boston-Montana product, I wish to say that I think the United Metal Selling Company was originally organized by the Lewisohns, and they were closely associated with the Boston & Montana. I think that prior to that time the product was handled by the Lewisohns, and I think they organized the selling company, but I do not know about the other companies. I think Mr. Clark

had refining works in the East. My impression is that the Parrot Company sent some of their product to Bridgeport, Connecticut. I know that after the sale of the Heinze properties, that Heinze had a contract with the Nichols Chemical Company and the Boston & Montana took over that contract, and shipped to the Nichols Chemical Company. They are in New York somewhere. I think the Parrot smelter stopped in 1899 or possibly 1900, and the Butte & Boston Company probably about 1901 or 1902. The Heinze smelter discontinued in 1906, the Colorado Company about that time, perhaps, 1905, I do not remember, the Clark smelter sometime in 1910. The copper smelters that are operating in the state at the present time are the Washoe plant at Anaconda, the Boston-Montana plant at Great Falls, and the Pittsmont at Butte. At the Great Falls smelter, we take the ores from the old group that was formerly in the possession of the Boston-Montana Company, and we have ores from some of the other Butte copper mines. I do not recall just what ones they are. Our annual output before the transfer to the Anaconda Company was about ninety million pounds a year. I have had nothing whatever to do with the Washoe smelter at Anaconda, but have kept advised, in a general way of operations there. Whenever there is anything of importance that might be used to advantage of Great Falls, I have endeavored to keep track of developments, consulting with them, as a matter of course, about the improvements and

operations of the two plants. I think that the "Mineral Industry" is recognized authority. The production of copper in the United States in 1899 is given in it at five hundred eighty-one million, three hundred and nineteen pounds. The production of the Anaconda Company for 1899 is given at one million pounds. I cannot tell you if that is correct. It gives the production of the Boston-Montana in 1899 at seventy million pounds. That is in accordance with my recollection. I have the complete series of this Mineral Industry, of course, by the editor of the Mining and Engineering Journal, but I cannot verify it. It is a regular work found in the library of mining engineers, I think, very likely, and I presume that they generally refer to it for information on the mineral industry. It is printed and circulated and I have it in my library. I generally refer to it for general information upon these subjects. I have found some errors in it. The Engineering & Mining Journal is a recognized journal in my profession. I presume it is generally taken by men in my business and resorted to by them for information in their profession.

(By MR. WALSH):

We offer, if the court please, simply the table showing the production for 1896, '97, '98 and '99, found on page 159, down to and including total domestic production, 581,319,091 pounds, and the table given at page 164 for the same period.

(By MR. KELLEY):

That is from 1898 to when?

(By MR. WALSH):

1893 to 1899, giving the production of the Anaconda, Boston and Montana, Butte and Boston, Butte Reduction Works, Montana Ore Purchasing Company, and others, 237,958,951 pounds. Page 254, copper production in Montana.

(By MR. WALSH):

We offer the production for 1909 and 1910, appearing at page 7 of the Mining and Engineering Journal for January 7, 1911.

(By MR. KELLEY):

We object to that, if the court please. I do not think that even purports to be correct. I think the table itself will disclose that it is purely an estimate.

(By THE COURT):

You might let it go in subject to a correction when we get the government reports.

(By MR. WALSH):

This shows the total production for 1910 of 1,086,151,430 pounds, of which 288,449,425 is for Montana.

(The table of production of copper referred to is as follows, to-wit:)

PRODUCTION OF COPPER IN THE UNITED STATES.

(In Pounds.)

State.	1909	1910
Alaska	4,057,142	5,450,000
Arizona	292,042,829	297,081,605
California	53,357,451	45,141,043
Colorado	10,487,940	8,867,401

Idaho	7,770,010	5,317,039
Michigan	227,247,998	219,000,000
Montana	313,838,203	288,449,425
Nevada	51,835,309	63,788,000
New Mexico	5,134,506	5,700,000
Utah	100,438,543	127,906,115
Wyoming	89,654	200,000
Southern States and		
East	22,837,962	17,639,356
Other States	3,746,895	2,176,446

Totals.....1,105,336,326 1,086,151,430

In addition, there are what is generally known as the Amalgamated Company, the Pittsmont Company which is now producing copper in Butte. They call it the East Butte now, I believe. My understanding is that the production of that company last year was about twelve and a half million pounds. I am talking about 1911, making some estimate for the month of December. It was put down about twelve and a half million pounds, and the North Butte was estimated at about thirty million pounds, and besides that is the Tuolomne. I don't know what that production is.

(By THE COURT):

How much from the North Butte.

A. I understood about thirty million pounds. The production of the Tuolomne must be nearly ten million pounds for 1911. That is only my impression. The production is given as 3,750,000 pounds in 1910, but it was quite active in 1911.

I have become generally familiar with the mining claims in the Butte camp. Complainants' Exhibit No. 1 looks like a map of the district, a district map that seems to have been gotten out by Mr. William Walsh, the state mine inspector, certified to by him. It has the appearance of being a copy of the district map. It would take a pretty careful examination for me to verify that. I am familiar with the Badger State claim. From very early years that has belonged to the Boston and Montana Company. It was certainly before my connection with the company in 1898. The Badger State lies with reference to the area in Butte camp that was noted chiefly for copper in the year 1898 somewhat to the north and west. The Anaconda and St. Lawrence are about south of the Badger State, about one-half or three quarters of a mile distant. The great producers of 1898 and 1899 were the Anaconda and the St. Lawrence, the Mountain View, the Pennsylvania, the High Ore, Diamond, Gray Rock, Bell, the Wild Bull. The claims that were in the neighborhood of the Badger State that were producing copper at that time—well, the Gem mine produced copper ores, I think, at that time. That lies southeast of the Badger State. That was not worked to any great extent at that time but it produced ore, but I don't know as it would be enough to be a very great shipper at the time. At that time the great copper producing field of Butte was considerably south and to the east of the Badger State. Since that time the cop-

per producing area has been extended to the northwards, but I don't think very much to the west. That has been the tendency for the last ten years. The explorations have been to the north of the original well known copper district and also to the East. The Pittsmont Company is on the east. The mineral produced in the Gem all showed copper. My recollection is that the Edith May and the Jessie contain copper ore. They were not big producers in 1898 and 1899. They were all working in a comparatively small way at that time, but bearing no comparison in the amount of equipment and perfection of equipment that obtained, for instance, in the Pennsylvania or Anaconda. I believe the geological survey of 1896 made the Speculator vein the most northerly of the copper bearing veins, but I do not think they were right about it, because I know the Gem has produced copper ores. I do not think the limit really has been found to the north, because the Butte and Superior has now been opened to a considerable depth and does not produce copper at all. It produces zinc, and that is still to the north. We first commenced sinking our shafts on the Badger State on extensive scales there about two years ago, possibly three. We have established a very complete and perfect hoist there. The Badger State is not as well equipped as the Leonard and Pennsylvania claims. I have not any figures with me, and I do not know what the output of the Badger State was last year, perhaps, sixty thousand tons of ore, which would av-

erage about three and one-half per cent. copper. I would not call it a great producer yet as compared with some of the others. There are two systems there, an east and west system, and then a northeast and southwest system. I could not say which is the greater, because they have not really been opened up extensively enough to say one is better than the other. I haven't traced it to the surface outside of the Boston and Montana properties. I know of one vein that is found in the Jessie that comes out of the Badger State. In fact, the Jessie's sixteen hundred foot level ran over into the Badger State line. I have never had anything to do with the Red Metal Mining Company or its properties. We have received some ore from it at the works at Great Falls.

Cross Examination.

My recollection is that the United Metals Selling Company was organized by Lewisohn Brothers who had theretofore been prominently identified with the Boston and Montana affairs, and prior to the organization of the United Metals Selling Company there was a concern known as the Lewisohn Broths. a corporation. I recall that that corporation acted as a selling agent for the Boston and Montana Company and other corporations. I think there was an association by that name before it was formed into the selling company, so that in fact I do not think that the method of handling the product after it came from the refinery through a copper brokerage concern was in fact changed by handling it through the United Metals

Selling Company. I stated that Mr. Clark sent his copper direct to a refinery in New Jersey, and I think I mentioned the Waclark. The Waclark plant is only wire drawing metal plant. Mr. Clark, the same as other producers, has his copper ores refined at one of the largest refineries in the East. He formerly shipped some of his matte to Great Falls and it was reduced there. I do not think we have had any ore directly from his mines, but we received large quantities of the matter and converted it. My impression is that the Washoe plant has treated some of the ore from Senator Clark's mines. I am acquainted in a general way with the operations that were carried on at the M. O. P. plant. It was built up from time to time and was not a well arranged plant at all. I should say that it was a fact that a proportionately enormous loss of metal went out of the smoke stack of the Heinze plant. If the Red Metal Company, after its acquisition of the Heinze properties continued to run that smelter. It would have been necessary for them to ship crude ore to Basin, a distance of twenty-five miles and then ship the concentrates back to the M. O. P. smelter at Butte to have them reduced. There would be no question about its being the most economical and business like to ship the crude ore down to the Washoe concentrator and run it into and through the Washoe smelter and reduce it, on account of the difference in the character of the plant and economy in handling. There would likewise be economy in the transportation

charges. There would be no losses of concentrates in the railroad cars. The loss in fine concentrates when they are shipped in railroad cars is a very considerable factor. The Butte and Boston likewise operated a smelter in Butte. My testimony with reference to the condition of the M. O. P. plant is not applicable to the B. & B. plant, because the Butte & Boston plant had its own concentrator.

Q. If, as a matter of fact the saving of approximately a thousand dollars was made and it could be made by shutting down a plant of the character and type of the Butte and Boston plant in Butte and treating the ores in the Washoe plant at Anaconda, would you advise the court that it would be good business to do it?

A. I think so.

The Colorado plant was located in Butte also. I think it was the oldest plant in Butte. It started, I believe in 1879. It had, likewise, become antiquated and obsolete, so far as being a modern and economical plant. At one time I was superintendent of the Gagnon properties, and the ores at one time were reduced at the Colorado smelter, and I have personal knowledge under my own management of that plant. It certainly would be good business from the standpoint of economy and efficiency to ship the ores to the modern plant at Anaconda, because it costs, say, thirty cents to get the ores to the smelter by the street cars, but only ten cents by the Anaconda road, to say nothing of the fact that their plant was old and did not

have modern appliances. The ore from the Gagnon was not a very easy ore to concentrate and treat and it required the most approved appliances to get the best results on account of its finely divided materials. The closing down of these plants in Butte and these operations consolidated at Great Falls and at Anaconda would naturally enable you to work a low grade of ore. The production of copper in pounds has been proportionately increased and the grade of the ores that these companies have been able to treat has been greatly reduced so as to enlarge the tonnage. In other words, by reason of the changes in the place of reducing the ores the economies that have resulted therefrom, it is a fact that ores of much lower grade in copper content and in metal value can now be treated and reduced than could theretofore have been treated in the old plants; so that the transfer of these operations to Anaconda and to Great Falls has led to a great increase in the tonnage of the ore actually mined, but, perhaps, not proportionately as great an increase in the amount of metal extracted from the ores, though the production of metal has been greatly increased in the last ten years. Going back to the period of 1898 prior to the entrance of the Amalgamated Copper Company in the field and comparing the production of the Butte camp at that time with the production at the present time, both as to ore mined and metals obtained, I would say that the production has been increased. I do not regard Stevens Handbook as an authority from a techni-

cal standpoint. My attention was called particularly in connection with this map to the Badger State claim. Now, of course, I know where that is located and have been familiar with it for a great many years. It had been owned by the Boston and Montana Company for a great many years. I think it is comparatively an old location and an old mining claim in Butte. Prior to the development of the North Butte property the farthest north that I knew of any copper was in the Gem lode mining claim. The Gem vein is one of the old east and west veins I think. The copper producing area was supposed, at that time, to be bounded on the north by the Speculator vein, although the claims that lay below the Speculator claim and the Badger State up to the easterly extension of the Rainbow lode, were regarded as copper prospects. I said that this zone had extended northerly in a producing way during the last ten years. I do not know of any extension northerly in the Jessie vein and in the Badger State. That is the sole extension of the copper business in Butte so far as I know. The Alice properties lie northerly and northwesterly of the Badger State. To my knowledge there has never been discovered a vein of copper of any kind or character in any of the Alice properties. I will say in that connection, that I looked at the report of Professor Blake to see if he mentioned occurrences of copper there in 1898, and he did not. I am familiar with the workings in the Badger State. I do not think that the Boston and Mon-

tana Company before the consolidation, or the Anaconda Copper Mining Company since the consolidation, ever have driven a drift, a cross-cut, a working of any kind or character into a foot of the Alice ground. I observe upon this map a line which I assume to be the Jessie vein. It is drawn through the Badger State up into the easterly extension of the Alice property. The Jessie vein comes into the Badger State. It looked very poor when the first work was done from the Jessie into the Badger State. It was discouragingly poor. I do not know of any copper ore in the Badger State in any vein which in my opinion extends into the Alice ground. I have been in the Alice mine, though a great many years ago. The operations of the Alice Company, I think were stopped very soon after the decline in silver in 1893. It is generally understood that as a producing company the Alice stopped in 1893, about eighteen years ago. The depth of the Alice mine proper is about fourteen hundred and fifty or sixty feet. The developments were made in the section of the camp known as the silver district. That district, as far as I know, has never developed into anything but a silver district. The Alice mine was sunk upon the well known Rainbow lode, which is a silver and gold bearing lode. This lode extends in a curve, but in a general way it is easterly and westerly. On the Alice group—on the Rainbow Lode—the Moulton claim on the west was the most important producer. That belonged to Mr. Clark. Then came the Alice, the Magna

Charta and Valdemar, and that was about the easterly extension of the Alice property, as it was worked. I have always supposed that the easterly extension of the Rainbow lode after it left the Alice property was the Valdemar and the Black Rock, worked to a depth of twelve hundred feet. The ore is high in zinc. When the mine stopped in 1893, it was filled with water up to the ten level. In 1905 and 1906 the Alice was under lease to a man named Wiser, and he put in some appliances in the Alice mill for treating zinc ore, and while under his operation in 1906, the mill burned down and the other mill was destroyed after that. Then some years ago the hoisting works burned down. As to whether the Alice Mining Company has been a non-producing property—I know there have been lessors at work in the property, in the upper workings above the water level. These lessors are miners who go into small places and take out ore, and they work places that a corporation could not possibly work and obtain a profit. It is a fact well known to myself as a mining man in Butte that for many years the Alice Mining Company, as a corporation, had not carried on any mining operations, and that its surface plant had been destroyed. I did not know anything about the treasury of the company.

Redirect Examination.

The district of the Alice properties is a district that has this record down to great depth as I should say in the Alice to fourteen hundred feet,

is silver bearing. There has been no discovery of copper in the Badger State. As to whether the region of the Badger State has until recently been spoken of and designated as in the silver district and outside of the copper district, I do not know how it has been characterized, but copper ore has not been found in the Badger State until quite recently. Copper ore was found there at a depth of fourteen hundred feet. There had not been any production of copper down to fourteen hundred feet, that is, no shipment.

Q. And those developments have been comparatively recent. Mr. Goodale, which have demonstrated the value of the Badger State as a copper producing mine?

A. Well, within three years a shaft has been sunk.

Q. Well, when he speaks about the operators as regarding the region as extending from the Colusa on the east and the Anaconda and Parrot mines on the west to the Gagnon?

A. Yes, sir.

Q. That was the old copper producing region?

A. So far as east and west is concerned.

Now, some years later a group of claims known as the Chambers Syndicate was purchased and developed and afterwards became the so called "Northern" properties of the Anaconda Copper Mining Company. I know those claims, the Green Mountain and the Wild Bull. Those were well north of the Anaconda and the Parrot. The

development of those mines was prosecuted with special vigor about 1887 or 1888. There had been a company called the Mountain Consolidated that was operating, but was closed down when I arrived in Butte in 1885. I saw the hoist and works there, and it was not operating then, and later on it was taken over by the so-called Chambers Syndicate, and I think it became an operating mine in 1887 or 1888, possibly a little later. Its properties afterwards passed to either the Anaconda Company or the Washoe. Really they were never operated upon any large or commercial scale until they got into the hands of the Anaconda Company,—the Green Mountain. This Chambers Syndicate never had a smelter. I think that passed into the hands of the Anaconda Company about 1889 or 1890.

Q. So that, as you have regarded it, during all these years the north limit of the so-called copper district was where, Mr. Goodale?

A. Well, the producing limit until ten years ago, I suppose would be considered the Speculator and this group that you mentioned,—the Chambers Syndicate Group, the producing mines.

Until quite recently Main Street was generally supposed to mark the dividing line between the copper district and the silver district. Main Street runs north and south. The Gagnon and the Original are to the west of Main Street. Of course, so far as the transportation of the ores to Basin and back again is concerned, that was simply due to the

fact that the Heinze concentrator had burned down—at least, he commenced shipping to Basin after the burning down. I would guess that it burned down about 1900. So far as that is concerned, that would have been obviated by rebuilding the concentrator. Prior to that time it was not necessary to ship ores over to Basin and back again to Butte. Apparently the Butte and Boston before it passed into the common ownership with the Anaconda and the rest of them was operating its own smelter. I cannot say as to whether or not it was satisfied; at least they did not send their ores to the Washoe smelter at Anaconda. The Colorado Company had some mining properties in Butte.

Q. And it preferred, apparently, to smelt its own ores in its own smelter, rather than send them to Anaconda, although perhaps they could get a little better results by shipping to Anaconda?

A. You must bear in mind the Washoe plant, as rebuilt in modern times, was not started up until 1902. It was not until then that the Anaconda Company could by its better methods make better treatment.

Mr. Clark, I think, apparently seemed content to get along with his old tumble down smelter. I think he did have a desire to send his ores over to Butte for treatment there, but his smelter was running to pretty near its capacity. He made some very extensive improvements in it, only a short time before he sold out. He built a stack there

that must have cost about fifty thousand dollars. He kept on operating all the time. I spoke about Professor Blake's report on the copper district of Butte. He examined the Alice mine somewhere about 1885 and there is a paper he published on the silver mining in Butte. That, I think, was in 1887. Silver was the chief product of the Butte camp in 1885. I am inclined to think that by that time copper was overbalancing the silver in value of product. The Anaconda smelter was put up in 1883 and the Parrot was smelting before that time and also the Colorado and the predecessor in interest of the Boston and Montana had a smelter at Meaderville.

Recross Examination.

The Washoe smelter was completed about February, 1902, and after they had had difficulties in perfecting the plant, and it was about three years later I think that the B. & B. and the Trenton began shipping to Anaconda, and some six or seven years after the Amalgamated Company was formed. The Butte and Bacorn have within the past five or six years done some extensive developing and prospecting for a copper mine north of the Alice properties. They went down one thousand feet; also the North Butte Mountain. The north of the Rainbow lode from its westerly end clear on to its easterly end, the prospecting operations for copper must have been very extensive. I think that some millions of dollars have been spent up there in developing to find a copper mine. I do not

know of any producing copper mine having been found up there. There was never any amount of copper produced north of the Rainbow Group.

Redirect Examination.

The Butte and Bacorn is about a mile away. I do not think it is a mile from where the Rainbow vein comes down the hill. It is about a half a mile. I presume there could be a good deal of copper ore in that half mile. There is some very extensive prospecting north of the Alice,—the Glengarry and the Wabash. I think the depth of the Glengarry is three hundred feet. There is no copper, as a general rule, until you get below three hundred feet.

Re-Cross Examination.

It is my recollection that all of these companies, I imagine, are within half a mile, and some of them join the Alice properties on the north.

Witness Excused.

[Testimony of C. F. Kelley, for Complainants.

C. F. KELLEY, called as a witness on behalf of the complainants, having been first duly sworn, testified as follows:

Direct Examination.

(By MR. WALSH).

THE WITNESS: I am one of the directors of the Anaconda Copper Mining Company, and have been on the board I think since about the 28th day of November last; I am not quite sure that that is the exact date, but approxi-

mately that is correct. I have been familiar with the business of the Company in a general way for some years. At the time of the transfer in question there were present the following directors of the company: B. B. Thayer, John D. Ryan, F. P. Addicks, George H. Church, Urban H. Broughton, H. H. Rogers, Jr., and William Rockefeller. Mr. Thayer was president of the company and still is; Mr. Ryan was formerly president of the company but is now president of the Amalgamated Copper Company. I think Mr. Ryan was not an officer, other than a director of the Anaconda Company at the time of the conveyance in question; I do not think he was vice-president; I think Mr. Addicks was vice-president. I know who the directors of the Butte Coalition were at that time; I doubt if I can name all of them; I can name most of them; they were Mr. Thomas F. Cole, Mr. John D. Ryan, Mr. Thayer, Mr. Thornton, Mr. Foster and Mr. Dickson; I think they constituted the Butte Coalition board. I think Mr. Cole was president of that company at that time; I am not sure whether Mr. Ryan held any position other than that of director; if the Copper Handbook designates him as vice-president that is probably correct; the Copper Handbook is regarded as fairly reliable. I do not think that the Copper Handbook is regarded as an authority except insofar as the corporations—the directors interested in the companies give Mr. Stevens, who compiles the book the directory; I do not know whether it is kept up or not.

Mr. Stevens has for ten years been known as the statistician, particularly as to the production and the supply of copper and copper properties. It is Mr. Steven's custom to send out to copper producing concerns a blank which calls for certain information, and that is given to Mr. Stevens and compiled in the form of a book. I do not think that the book is regarded as an authority in any sense except generally as to the directors of a corporation and its officers, and its character, so far as the companies furnish the information. I either was in New York at the time of the holding of the stockholders' meeting in Salt Lake City on the 29th of May, 1910, or shortly before that. In a general way I recall the proceedings had antedating the action of the board of directors which was taken at this meeting; I think I had charge of the legal proceedings that resulted in these different corporations conveying their property to the Anaconda Copper Mining Company. I was concerned and connected with all of the proceedings and this was simply one of a series. I think I remember who attended the directors' meeting which authorized the calling of the stockholders' meeting. In regard to the parties at New York entering into a contract in relation to the transfer, afterwards culminating in the deed of the properties, the procedure was that the board of directors of the Alice and the board of directors of the Anaconda Copper Mining Company authorized their respective executive officers to enter into a

contract for the sale of the property, the contract to be subject to the ratification of the shareholders of the Alice Company, that being, as we took it, the procedure outlined by the statutes of Utah. In that procedure the Alice Company was represented by Mr. Garver. I will say this, the Butte Coalition Company had employed the firm of Shearman & Sterling and Mr. Garver, a member of that firm was consulted so far as the action was taken by the Butte Coalition Companies were concerned in New York; in Utah, the firm of Richards, Richards & Ferry represented the Alice Company. At the meeting of the directors of the Alice Company referred to, I am not sure whether they were represented by counsel, but the plan had been approved by their counsel, and the minutes, the resolutions of the meetings, of course, had been prepared in advance, except as to the blanks that were necessary that necessarily would be left open. I think it is true that I was the only counsel present, and in addition to that I believe that a member of the directors, I remember at least one of the directors of the Butte Coalition Company obtained the advice and submitted the plan to his own counsel. Mr. Ryan at that time was a common director of both companies.

Cross Examination.

(By MR. CHRISTIAN):

Aside from being a director and vice president of the Anaconda Copper Mining Company, I am

one of the counsel for the Anaconda Copper Mining Company. At the time these proceedings were had I was not an officer of the Anaconda Company or the Alice Company. I am familiar with the holdings of the Amalgamated Copper Company in certain companies; the Amalgamated Copper Company owns fifty thousand shares, or about one-twentieth, in all, of the capital stock of the Butte Coalition Company; the remaining portion of that stock is held by private holders. The Amalgamated Company does not own any stock in the International Smelting & Refining Company; the Amalgamated has no interest in that company as a stockholder. I am familiar with the so-called consolidation proceedings held some time ago between the various companies.

Q. Kindly state the properties of that consolidation.

MR. WALSH: If the court please, I must object to this as cross examination. I have no objection to his putting it in as part of the case of the defendant.

THE COURT: He may answer with that understanding. It is not to be regarded as cross examination.

A. I will state that I am familiar with the consolidation that was perfected by which the Anaconda Company acquired the physical property of the other corporations operating in Butte, or some of them, and I am likewise familiar with the causes which led up to the consolidation of these

different concerns, so far as their physical properties are concerned. I will say that the causes which led up to and resulted in the consolidated were, I think, three, primarily. The first was due to the fact that a part of the mining companies operating in Butte had reached the point where they could no longer produce their ores at a profit; that condition was the result of a necessity of operating separate, independent organizations, running separate plants and hoists, maintaining separate equipment, and making their own individual development to the various ore bodies, owned by these different companies. The result was that the overhead charges were eating up a large part of the profits, and, as I say, with some of the companies it was rather a close proposition, and a close proposition so far as certain territory was concerned. It would be to the best interests of all if a plan or organization could be perfected by which the mining ground that was contiguous to one company or another as the case might be, might be worked without the necessity of each company making its separate individual development. In other words, it seemed like a waste and an unwise expenditure of money to require one concern to equip a surface plant to maintain it separately, to run up to a line and stop at the end of its property, at the end line of its property, whereas its development, its shaft, its crosscuts, its laterals and its surface equipment, were completely adequate to enable that company

to proceed and take out the ore and to require another concern operating the property contiguously to have its separate plant, and its separate development, and run up, say, to the other side and stop, at its line. Now, that was one cause. The second cause, or the reason that led to this consolidation, was the increasing number of underground mining conflicts that could not be equitably and legally adjusted as between these different companies without the expenditure of an enormous amount of money, from which no good could come. In explanation of that I want to say that in certain districts in Butte, the prospecting development had shown a large number of veins that were not profitable or productive near the surface. Now, in order to determine absolutely the ownership of those veins, it would be necessary for the different corporations, owning them separately, to have developed the apex by raising through an absolutely unprofitable portion of the vein to reach the apex, and then opening up the apex, and disclosing it with reference to the exterior boundaries of the different mining companies or claims owned by the different companies. All of that work would have been dead work; it would have cost a large amount of money and as I say, would not have been productive so far as anybody realizing from the actual doing of the work. The third reason that led to the consolidation, was the desire to so consolidate these properties that the very heavy burden, the exploration and development

might be carried on for the joint benefit of all of the different companies. For instance, these properties lay—I am not speaking with reference to the Alice properties, because that was an after thought, I think it had no part in the original consolidation—but often times property lay contiguous, the property of one company was contiguous to the property of another company. Now, it cost a great deal of money to prospect and develop and open up these mining claims, and there was not any fair or equitable way in which that charge could be distributed among the different companies. If the Anaconda Company, for instance, had begun an extensive exploration, and found a vein, although it might have been profitable for the Butte & Boston Company, there was no way of dividing the expense, and it was the different complexities that came about in the operation of these different mining companies as separate units that led to the consolidation of the physical properties. I think that is a fair statement of it.

Re-Direct Examination.

(By MR. WALSH):

I suppose it is true that if one company owned every business in Butte there would be no such thing as controversies. We never had any controversy with the Pittsmont, and we have never really felt that there was any justifiable controversy with the Ballaklava, so far as it was concerned. There was a controversy with Senator Clark which both parties took up in an amicable manner and

endeavored as best they might to adjust. I do not think the Anaconda Company will have any controversy over the ownership of the Clark properties. If there were different companies owning properties in Butte, and the Anaconda Copper Mining Company did some development it would inure to the benefit of some of the other companies, and they could not be made to share, and it is also true that under the conditions prevailing during the last several years, if those companies were all operating separately, as they were at the time you mention, a good many of them would not be operating at all. The Tuolomne Company has been operating there, and if they chose to do some development it might inure to the benefit of our property. The North Butte has very extensive development in that region and has contributed to the Tuolomne's welfare without any charge for it. That state of affairs exists in every mining camp where there are independent operators or development done by one company, but still it results in a great waste to have a great many companies operating on independent development which could be done by one. If twenty different companies operated at Butte, independently the expense would be immeasurably greater than if one company operated all of them, and a good many of them could not be operated at all; they were operating in 1899; at that time the Boston & Montana, the Butte & Boston, the Parrot, the Colorado, the Montana Ore Purchasing Company, the Orig-

inal, Colusa Parrot and possibly a good many more companies were operating. Of course, you will appreciate and understand that each year with the increasing depth of the mines and the very depreciated condition of the metal market during several years last past, the cost has to a great extent increased, and that at the same time the grade of ore perhaps in some of the older veins has likewise diminished so far as metal content is concerned, and it is necessary to carry on exploratory work during the past few years to a greater extent than it was in former years. The economies in operation have necessarily been great in order that operations may be carried on at all. A considerable saving has been effected by the utilization of electric power instead of steam power; electricity for power purposes was first used in 1901, or thereabouts. As to controversies about ore bodies in depth, they would subsist the same way if each of these companies was still pursuing its existence as an independent and competing company, but where there is a common ownership there is no controversy. After the Butte Coalition was formed in 1906, we took up different Heinze properties and the representatives of both sides, each side having its independent engineer, and we attempted as best we could to provide planes which would bound the respective rights of the different companies to different ore bodies, and to that end exchanged, where there were common interests, common interests in cer-

tain properties, reciprocal deeds, but we found upon development being carried further that those planes while they equitably adjusted the rights with reference to the ore bodies we then knew, were not applicable to some we subsequently discovered, and the intention at the time was to fix merely the rights with reference to definite ore bodies and not lease or convey away from one company to the other valuable rights that might thereafter accrue by reason of subsequent developments and discovery. Those agreements were entered into between the Red Metal Company and the companies owning the adjacent properties,—the different companies, and it took out of this controversy the principal features which were in controversy between the Heinze companies and the different Amalgamated Companies. We have from time to time fixed lines with other companies. We fixed boundary lines between the old Speculator claims in settlement of that controversy, and I think we have at times fixed lines between Senator Clark's properties and our properties, the Anaconda properties. We have never had, I think, any controversy with the North Butte. We never have had any actual controversy with the North Butte Company, and we have fixed side lines as to our respective rights in the event of developments on certain veins resulting in certain disclosures.

Witness Excused.

MR. WALSH: If your honor please, I desire to offer in evidence a transcript of the proceedings of the meeting of the stockholders of the Alice Gold and Silver Mining Company, at which the sale in question was authorized.

(Said transcript of the proceedings was received in evidence, marked Plaintiffs' Exhibit 2, and is in the words and figures following):

Plaintiffs' Exhibit 2.

Minutes of a Special Meeting of the Stockholders of the ALICE GOLD & SILVER MINING COMPANY, Held at the principal office of the Company, in the Utah Savings & Trust Company Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D. 1910, at 10 o'clock A. M.

The following named stockholders, owning or representing the number of shares of the capital stock of the Company hereinafter set opposite their respective names, were present in person or by proxy, filed with the Secretary, to-wit:

E. S. Ferry, in person, owning.....	100 shares
Joe Richards, by D. Gay Stivers, proxy.....	300 "
Isabelle McQueeney, by	
Willard Hamer, substitute proxy.....	1,000 "
Lina H. Speer, by Willard	
Hamer, substitute proxy.....	100 "
Henry C. Frank, by F. S.	
Richards, substitute proxy.....	200 "
Charles F. Gibson, by F.	
S. Richards, substitute proxy.....	2,000 "

Adler, Mrs. Caroline,	by E.S. Ferry, proxy	200 shares
Aikman, Mrs. N. Augusta	" " " "	200 "
Allen, Joseph W.	" " " "	115,098 "
Allen, Norman F.	" " " "	33 "
Bach, Anna B. Mrs.	" " " "	200 "
Benjamin, George C.	" " " "	100 "
Bogle, John	" " " "	50 "
Boyd, Miss Margaret C.	" " " "	100 "
Brown, Charlotte A.	" " " "	75 "
Brown, Miss Mabel	" " " "	20 "
Bown, Miss Margaret	" " " "	20 "
Brown, Mrs. Margaret C.	" " " "	15 "
Brown, William C. Jr.	" " " "	20 "
Carroll, Mrs. Julia F.	" " " "	100 "
Catlin, Ephrom	" " " "	200 "
Chislett, Wm.	" " " "	250 "
Clarke, John D.	" " " "	100 "
Collins, James V.	" " " "	1,000 "
Collins, W. L.	" " " "	42 "
Conlon, Patrick	" " " "	100 "
Curtis, N. M.	" " " "	500 "
Driscoll, Dennis	" " " "	200 "
Durston, John H.	" " " "	500 "
Eames, Elizabeth Miss	" " " "	200 "
Eising & Co., E.	" " " "	100 "
Ferns, John	" " " "	500 "
Fink, J. C.	" " " "	10 "
Flannigan, Jerry	" " " "	200 "
Force, Marion Mrs. S.	" " " "	200 "
Fuller, Miss Rhoda	" " " "	100 "
Gehrmann, Chas.	" " " "	50 "

Anaconda Copper Mining Co. et al. 319

Gold, Meyer	by E. S. Ferry, proxy	100 shares
Goldberg, David	" " " " "	100 "
Goodman, Milton F.	" " " " "	300 "
Goodman, Mrs. Sarah	" " " " "	200 "
Graves, S. R.	" " " " "	54 "
Gunniss, Mrs. Annie	" " " " "	200 "
Haight, Edward	" " " " "	100 "
Haley & Co., Caleb	" " " " "	200 "
Hall, Mrs. Ella B.	" " " " "	25 "
Harper, Walter S.	" " " " "	100 "
Harris, Samuel	" " " " "	100 "
Hayes, H. J.	" " " " "	54 "
Heidelsheimer, S.	" " " " "	200 "
Hess, Ferdinand	" " " " "	200 "
Howatson, Robert	" " " " "	25 "
Irvine, E. J.	" " " " "	25 "
Kirkpatrick, James	" " " " "	100 "
Knapp, John A.	" " " " "	400 "
Kringel, Ira C.	" " " " "	200 "
Love, William	" " " " "	100 "
Lukach, Isidor	" " " " "	100 "
Lyons, Michael	" " " " "	100 "
McConihe, A. Douglas	" " " " "	300 "
McCormick, J. E.	" " " " "	500 "
McGovern, James	" " " " "	200 "
McHugh, Thomas	" " " " "	100 "
Mass, Wm.	" " " " "	2,500 "
Macinder & Co., James	" " " " "	200 "
MacMillan, Mrs. Alice R.	" " " " "	1,400 "
Malcom & Coombe	" " " " "	100 "
Muldoom, Mrs. Martha J.	" " " " "	25 "

Morris, Sternbach & Co.	by E. S. Ferry, proxy	300 shares
Newborg & Co.	" " " "	11,925 "
Newton, Mary M.	" " " "	200 "
Oakes, T. F.	" " " "	300 "
Ober, Maurice	" " " "	800 "
Paine, Webber & Co.	" " " "	425 "
Pease, Theodore Dennis	" " " "	66 "
Reimel, Edward	" " " "	400 "
Rhodes, F. B. F.	" " " "	300 "
Robinson, E. George	" " " "	1,600 "
Robinson, Maria Maud	" " " "	1,800 "
Robinson, Mrs. Mary E.	" " " "	176 "
Robinson, Miss Mary Elizabeth	" " " "	1,750 "
Robinson, Nathaniel	" " " "	1,600 "
Ryan, John D.	" " " "	60,656 "
Salverson, Fred	" " " "	75 "
Shearer, Charles T.	" " " "	50 "
Shaley, Mrs. Mina B.	" " " "	200 "
Shores, Arthur J.	" " " "	300 "
Spencer, Chas. D.	" " " "	350 "
Spratt, Thomas	" " " "	100 "
Stokes, Mrs. Ada	" " " "	650 "
Strong, A. C.	" " " "	100 "
Sutro Bros. & Co.	" " " "	200 "
Thornton, W. D.	" " " "	58,161 "
Turner, Mrs. Anna	" " " "	300 "
Turner, Christopher	" " " "	350 "
Valentine, W. S.	" " " "	100 "
Van Sant, O. B.	" " " "	200 "
Wagner, Wm.	" " " "	100 "

Anaconda Copper Mining Co. et al. 321

Weil, Harry S.	by E. S. Ferry, proxy	100 shares
Westheimer, N.	" " " " "	1,200 "
White, Miss Mary	" " " " "	20 "
Whiting, John C.	" " " " "	145 "
Willenberg, Carl	" " " " "	100 "
Wimpfheimer, Chas. A.	" " " " "	1,000 "
Wooster, Mattie V.	" " " " "	100 "
Wynne, W. E.	" " " " "	200 "
Eliassof, Harry N.	" " " " "	500 "
Gibson, Wm. H.	" " " " "	2,400 "
Hungate, Mary	" " " " "	50 "
Keaveny, James	" " " " "	10 "
Lewisohn Bros.	" " " " "	1,300 "
Lorton, Hattie A.	" " " " "	100 "
Mayo, Edwin L.	" " " " "	600 "
Peck, Thomas	" " " " "	500 "
Tingle, Elizabeth	" " " " "	200 "
William Tebbs	" " " " "	100 "
Estate of Armitage		
Rhodes, deceased	" " " " "	142 "
Estate of Colonel Rhodes,		
deceased	" " " " "	333 "
Morris Eisenberg	" " " " "	1,000 "
Rhodes, Mrs. Mabel	" " " " "	7 "
Frances V. Emerson	" " " " "	225 "
Mary E. Hutton	" " " " "	433 "
Ella T. Pearson	" " " " "	50 "
Wm. E. Wallace	" " " " "	50 "
Victor Day	" " " " "	200 "
Joseph S. Baer in person,		
owning		300 "

J. R. Walker in person,

owning

2,110 "

Peter Geddes by Jos. R.

Walker, proxy

3,100 "

W. C. Lewis,

by E. S. Ferry, proxy

500 "

H. Hobert Keeler

" " " " "

1,500 "

Alfred Clifford

" " " " "

500 "

 295,100 "

It appearing that there was represented at the meeting in person or by proxy, stockholders owning or representing a total of 295,100 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than a majority of the entire capital stock of the company, the meeting was duly organized as follows:

On motion duly made and seconded, Mr. E. S. Ferry was nominated and elected Chairman of the meeting, 295,100 shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. Ferry took the chair.

On motion duly made and seconded, Mr. D. Gay Stivers, a suitable person, was elected Secretary of the meeting.

The chairman thereupon announced that proof had been made by the affidavits of J. W. Allen, secretary of the Company, Blanche H. Newcomb, clerk of the "Salt Lake Telegram," a daily newspaper published in the city of Salt Lake, Utah, and also by Mr. Joseph F. MacDonald, clerk of the "New York Times," a daily newspaper published

in the City of New York, state of New York, that notice had been duly given by mailing and publication to the stockholders of the company, as required by the by-laws of the corporation.

Said affidavits were exhibited at the meeting, filed with the Secretary, and are respectively in the following form:

State of New York,
County of New York, ss.

J. W. Allen, being first duly sworn, deposes and says: That he is the secretary of the Alice Gold & Silver Mining Company, that acting under and by virtue of a resolution duly adopted by the board of directors of said company at a special meeting of said Board, held at the office of the company, No. 42 Broadway, New York City, New York, on Wednesday, the 27th day of April A. D. 1910, at 12 o'clock M. affiant made out and caused the following notice of said meeting to be deposited in the United States Mail, enclosed in a suitable envelope, with postage prepaid thereon, addressed and directed to each stockholder of record of the above named company, by his name and to his place of residence appearing upon the records of said company.

Affiant further says that acting under said resolution he gave instructions that a similar notice should be published daily for at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 5th day of May, A. D., 1910, to the 27th day of May, A. D., 1910, in the

"Salt Lake Telegram," a daily newspaper of general circulation, published at the City of Salt Lake, Salt Lake County, Utah, and also gave instructions that the said notice should be published at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 4th day of May, A. D., 1910, to the 27th day of May, A. D., 1910; said notice above referred to being in the following form:

**"NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF
ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings and Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M., for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all of the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company to the said

Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN,
Secretary."

(Signed) J. W. ALLEN.

Subscribed and sworn to before me, this 19th day of May, A. D., 1910.

HENRY MICHAELIS,

[Notarial Seal] Notary Public for the State of New York, residing at New York City, N. Y.

My commission expires March 30, 1912.

State of New York,

County of New York, ss.

JOSEPH F. MACDONALD, being first duly sworn, says: That he is the principal clerk of the "New York Times," a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 4th

day of May, A. D., 1910, up to and including the 27th day of May, A. D., 1910.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May 19th, 1910, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the 27th day of May, A. D., 1910, as follows:

NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF
ALICE GOLD & SILVER MINING COMPANY.

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver
Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M. for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice

Gold & Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN,
Secretary."

(Signed) JOSEPH F. MACDONALD.

Subscribed and sworn to before me this 20th day of May, A. D. 1910.

(Signed) HUGH C. PARKER,
[Notarial Seal] Notary Public, Kings Co., Registered in New York Co. 2115.
Notary Public for Kings County,
N. Y., residing at Brooklyn,
N. Y.

My Commission Expires March 30, 1912.

State of Utah,
County of Salt Lake, ss.

BLANCHE H. NEWCOMB, being first duly sworn says: That she is the principal clerk of the "Salt Lake Telegram," a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was

instructed to cause the publication of said notice in the said newspaper daily, beginning on the 5th day of May, A. D. 1910, up to and including the 27th day of May, A. D. 1910.

Affiant further says that pursuant to said instructions she received the said notice, and that the said notice has been published daily in the regular issue of said paper from the 5th day of May, A. D., 1910, to the 27th day of May, A. D., 1910, inclusive.

**"NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF THE
ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver
Mining Company:

NOTICE IS HEREBY GIVEN, That a special meeting of the stockholders of the Alice Gold & Silver Mining Company, will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M. for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company to the said Ana-

conda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN,
Secretary."

(Signed) BLANCHE H. NEWCOMB.

Subscribed and sworn to before me, this 27th day of May, A. D. 1910,

(Signed) H. J. SCHULTZ,
Notary Public for the State of Utah, residing
at Salt Lake City, Utah. My Commission
Expires February 10th, 1914.

[Notarial Seal]

Thereupon the chairman appointed Mr. D. Gay Stivers and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the Secretary, and the said committee, after an examination of said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the Company, representing 295,100 shares of the capital stock of the Company, which said shares of stock, and the owners or representatives thereof, are hereinbefore spread on the minutes of said meeting.

On motion, duly made, seconded and adopted, the report of the committee was accepted.

Thereupon, the said proxies were exhibited to the meeting, and, after examination, were filed by the Secretary in his office.

The Chairman then stated to the meeting the purposes for which the same had been called, and the Secretary read to the meeting the minutes of the Directors' Meeting held on the 27th day of April, A. D. 1910, at the office of the Company, No. 42 Broadway, New York City, New York.

On motion, duly made, seconded and adopted, the said proceedings of the said directors', as the same appeared of record at said meeting, were ratified, approved and confirmed, and made the act of the stockholders of this corporation.

WHEREUPON, the following resolution was introduced:

WHEREAS, at a special meeting of the Board of Directors of this Company, held at the office of the company, 42 Broadway New York City, New York, on Wednesday, the 27th day of April, A. D., 1910, it was decided to call a special meeting of the stockholders of this company on the 27th day of May, A. D., 1910, for the purpose of considering a proposition to ratify, approve and confirm a certain contract which the officers of this corporation were authorized by the Board of Directors to enter into with the officers of the Anaconda Copper Mining Company, providing for a sale, transfer and conveyance of all of the property and assets owned or possessed by this Com-

pany, of every kind and character, real, personal and mixed, corporeal and incorporeal, in law and in equity, for thirty thousand (30,000) shares of the capital stock of the Anaconda Copper Mining Company, said contract of sale to be made subject to the ratification, approval and authorization of the stockholders of this corporation at this meeting, as required by law, and

WHEREAS, acting under and by virtue of the authority so conferred by said resolution, the following agreement and contract of sale has been duly entered into by the officers of this company on behalf of this company with the officers of the Anaconda Copper Mining Company on behalf of the last named corporation; be it

RESOLVED, that the acts of the officers of this corporation in entering into the following agreement and contract of sale, to-wit:

THIS AGREEMENT, made and entered into this 19th day of May, A. D. 1910, between the Alice Gold & Silver Mining Company, a corporation organized under the laws of the State of Utah, hereinafter designated as the "FIRST PARTY," and the ANA-CONDA COPPER MINING COMPANY, a corporation organized under the laws of the State of Montana, hereinafter designated as the "second party" WITNESSETH:

That subject to the conditions and agreements hereinafter set forth, the first party hereby agrees to sell and does hereby sell, for and in consideration of thirty thousand (30,000) shares of the cap-

ital stock of the second party, full paid, at par and non-assessable, to be issued and delivered by the second party to the first party, or to such person or persons as the first party may hereafter designate; and the second party hereby agrees to purchase, and does hereby purchase, upon the conditions aforesaid, all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, reduction works, and all other works, machinery, tools and implements whatsoever, to the first party belonging, and wherever situate, lying or being, and for whatever purpose used, owned or possessed.

Also, all water and water rights, reservoirs and reservoir rights, pipes, flumes, ditches, aqueducts and other works and rights of way therefor.

Also, all lands, easements and other real estate, improved and unimproved, to the first party belonging, and wherever situate, lying or being, together with all and singular all rights and privileges possessed or enjoyed in connection therewith.

Also, all right, title and interest whatsoever, legal or equitable, of the first party, of in and to any and all mines, mining rights, lands, easements or other real estate whatsoever, and wherever situate, lying or being.

Also all works, plants, mills, tramways, machinery, furniture, supplies, equipment, stock on hand, business, good will and other property whatsoever, and wherever situate, lying or being.

Also, all bills receivable, accounts, money on hand, moneys due or to become due by reason of any past sales or transactions, and all ores, minerals and metals which have been mined; all matte, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining; all precipitates, and all argentiferous mud ready to be melted or parted, owned or possessed by said first party.

Also, any and all other properties, real, personal and mixed corporeal and incorporeal, legal and equitable, choses in action, and possession, of every kind, character and description, wherever the same may be situated, belonging to the said first party, or in which the said first party is in any wise interested or entitled to become interested.

Said first party does also give, and grant unto said second party the right to inspect, examine, and at all reasonable times to take copies of all books of account, minutes, records, letters, copies of letters, files, and all other private books, documents and papers whatsoever, of said first party.

The foregoing sale and transfer is made subject to the following conditions:

(a) Said second party agrees to take over, and does hereby take over, the said property of the said first party as of the 30th day of April, 1910, and agrees to carry out and fully perform and discharge all contracts, obligations and liabilities of every kind, character and description, whether in contract or in tort, and whether now or hereafter enforceable against the first party, and to under-

take to and fully carry out and completely perform all valid executory provisions of any contract or contracts which may exist at the date of the transfer and delivery of all of the property and assets of said first party to said second party.

(b) Also, subject to all existing leases, releases, rights of way and other easements heretofore granted, made or given by the said first party or its predecessors in interest, and also to all vested rights obtained by others against said first party or its predecessors in interest by legal proceedings or by adverse possession or user.

(c) All taxes, lien and assessments upon, or any part, of the property sold, or against the first party, whether due and payable, or to become due and payable, shall be paid by said second party hereto.

(d) Said first party agrees to make, execute and deliver through its proper officers, duly authorized, any and all deeds, conveyances or other instruments necessary or proper for carrying out this agreement according to its true intent and meaning and said second party agrees to make, execute and deliver such undertakings, releases, stipulations or other instruments as may be necessary on its part to carry out all of the terms and provisions of this agreement according to its true intent and meaning.

(e) It is expressly understood and agreed that the foregoing contract of sale and transfer is made subject to the confirmation and ratification thereof by the stockholders of the said first party at a

special meeting of said stockholders, called for that purpose to meet at the principal office of the Company in the Utah Savings & Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A. D. 1910, it being the intention of this agreement to sell and convey all of the property and assets specified in this contract, subject only to the conditions herein expressed and the said ratification and confirmation of said contract by the said stockholders of said first party.

IN WITNESS WHEREOF, the parties hereto have caused their corporate names to be hereunto signed by their respective Presidents, and their corporate seals to be hereunto affixed, and attested by their respective Secretaries, the day and year in this instrument first above written.

(Signed)

ALICE GOLD & SILVER MINING CO.,

[Seal] By JOHN D. RYAN, Its President.

Attest:

J. W. ALLEN, Its Secretary.

ANACONDA COPPER MINING CO.,

[Seal] By B. B. THAYER,
Its President.

Attest:

C. F. KELLEY,

Its Secretary.

State of New York,

County of New York, ss.

On this 19th day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said

County and State, personally appeared John D. Ryan, known to me to be the President of the Alice Gold and Silver Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

[Seal] Notary Public for the State of New York, residing at New York City, N. Y.

My commission expires March 30th, 1911.

State of New York,
County of New York, ss.

On this 19th day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared B. B. Thayer, known to me to be the President of the Anaconda Copper Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

[Seal] Notary Public for the State of New York, residing at New York City, N. Y.

My commission expires March 30, 1911.

be, and the same are hereby, in all respects ratified, approved, confirmed and made the acts of this corporation; and be it further

RESOLVED, that the foregoing agreement and contract of sale is in all of its terms, stipulations, provisions and agreements hereby ratified, approved, confirmed and made the act and deed of this corporation, and that the Board of Directors and the proper officers of this corporation be, and they are hereby authorized, empowered and directed to do and perform each and every act necessary and requisite to fully carry out and make effective the provisions and intent of this resolution and agreement and contract of sale, in accordance with law, so as to fully and completely divest this company of all right, or claim of right, title, or claim of title, in or to all or any of the above specified property, and to pass all and every right, title and interest of this company in and to said property to the said Anaconda Copper Mining Company, upon the payment by said Anaconda Copper Mining Company to the credit of this company, of thirty thousand (30,000) shares of the capital stock of the said Anaconda Copper Mining Company; and be it further

RESOLVED, that the officers of this company be, and they are hereby, authorized, empowered and directed to make, execute, acknowledge and deliver such deeds of conveyance, assignments, transfers, stipulations or other instruments as may be necessary to fully and completely carry out the

provisions and purposes of said agreement and contract of sale.

On motion duly made and seconded that the said resolution be adopted, the following stockholders voted in favor of said resolution:

E. S. Ferry, in person, owning	100 shares
Joe Richards, by D. Gay Stivers, proxy	300 "
Isabelle McQueeney, by Willard Hamer, substitute proxy	1,000 "
Lina H. Spear, by Willard Hamer, substitute proxy	100 "
Henry C. Frank, by F. S. Richards, substitute proxy	200 "
Charles F. Gibson, by F. S. Richards, substitute proxy	2,000 "
Adler, Mrs. Caroline, by E. S. Ferry, proxy	200 "
Alkman, Mrs. N. Augusta " " " " "	200 "
Allen, Joseph W. " " " " "	115,098 "
Allen, Norman F. " " " " "	33 "
Bach, Anna B., Mrs. " " " " "	200 "
Benjamin, George C. " " " " "	100 "
Bogle, John, " " " " "	50 "
Boyd, Miss Margaret C. " " " " "	100 "
Brown, Charlotte A. " " " " "	75 "
Brown, Miss Mabel " " " " "	20 "
Brown, Miss Margaret " " " " "	20 "
Brown, Mrs. Margaret C. " " " " "	15 "
Brown, William C., Jr. " " " " "	20 "
Carroll, Mrs. Julia F. " " " " "	100 "
Catlin, Ephrom " " " " "	200 "
Chislett, Wm. " " " " "	250 "
Clarke, John D. " " " " "	100 "

Anaconda Copper Mining Co. et al. 339

Collins, James V.	by E. S. Ferry, proxy	1,000 shares
Collins, W. L.	" " " " "	42 "
Conlon, Patrick	" " " " "	100 "
Curtis, N. M.	" " " " "	500 "
Driscoll, Dennis	" " " " "	200 "
Durston, John H.	" " " " "	500 "
Eames, Elizabeth Miss	" " " " "	200 "
Eising & Co., E.	" " " " "	100 "
Ferns, John	" " " " "	500 "
Fink, J. C.	" " " " "	10 "
Flannigan, Jerry	" " " " "	200 "
Force, Marion Mr. S.	" " " " "	200 "
Fuller, Miss Rohda	" " " " "	100 "
Gehrmann, Chas.	" " " " "	50 "
Gold, Meyer	" " " " "	100 "
Goldberg, David	" " " " "	100 "
Goodman, Milton F.	" " " " "	300 "
Goodman, Mrs. Sarah	" " " " "	200 "
Graves, S. R.	" " " " "	54 "
Gunniss, Mrs. Annie	" " " " "	200 "
Haight, Edward	" " " " "	100 "
Haley & Co., Caleb	" " " " "	200 "
Hall, Mrs. Ella B.	" " " " "	25 "
Harper, Walter S.	" " " " "	100 "
Harris, Samuel	" " " " "	100 "
Hayes, H. J.	" " " " "	54 "
Heidelsheimer, S.	" " " " "	200 "
Hess, Ferdinand	" " " " "	200 "
Howatson, Robert	" " " " "	25 "
Irvine, E. J.	" " " " "	25 "
Kirkpatrick, James	" " " " "	100 "
Knapp, John A.	" " " " "	400 "

Kringel, Ira C.	by E. S. Ferry, proxy	200 shares
Love, William	" " " " "	100 "
Lukac, Isider	" " " " "	100 "
Lyons, Michael	" " " " "	100 "
McConihe, A. Douglas	" " " " "	300 "
McCormick, J. E.	" " " " "	500 "
McGovern, James	" " " " "	200 "
McHugh, Thomas	" " " " "	100 "
Maas, Wm.	" " " " "	2,500 "
Macinder & Co., James	" " " " "	200 "
MacMillan, Mrs. Alice R.	" " " " "	1,400 "
Malcom & Coombe	" " " " "	100 "
Muldoon, Mrs. Martha J.	" " " " "	25 "
Morris, Sternbach & Co.	" " " " "	300 "
Newberg & Co.	" " " " "	11,925 "
Newton, Mary M.	" " " " "	200 "
Oakes, T. F.	" " " " "	300 "
Ober Maurice	" " " " "	800 "
Paine, Webber & Co.	" " " " "	425 "
Pease, Theodore Dennis	" " " " "	66 "
Reimel, Edward	" " " " "	400 "
Rhodes, F. B. F.	" " " " "	300 "
Robinson, E. George	" " " " "	1,600 "
Robinson, Maria Maud	" " " " "	1,800 "
Robinson, Mrs. Mary E.	" " " " "	176 "
Robinson, Miss Mary Elizabeth	" " " " "	1,750 "
Robinson, Nathaniel	" " " " "	1,600 "
Ryan, John D	" " " " "	60,656 "
Salvesen, Fred	" " " " "	75 "
Sherrer, Chas. T.	" " " " "	50 "
Shaley, Mrs. Mina B.	" " " " "	200 "

Anaconda Copper Mining Co. et al. 341

Shores, Arthur J.	by E. S. Ferry, proxy	300 shares
Spencer, Charles D.	" " " " "	350 "
Spratt, Thomas	" " " " "	100 "
Stokes, Mrs. Ada	" " " " "	650 "
Strong, A. C.	" " " " "	100 "
Sutro Bros. & Co.	" " " " "	200 "
Thornton, W. D.	" " " " "	58,161 "
Turner, Mrs. Anna	" " " " "	300 "
Turner, Christopher	" " " " "	350 "
Valentine, W. S.	" " " " "	100 "
Van Sant, O. B.	" " " " "	200 "
Wagner, Wm.	" " " " "	100 "
Weil, Harry S.	" " " " "	100 "
Westheimer, N.	" " " " "	1,200 "
White, Miss Mary	" " " " "	20 "
Whiting, John C.	" " " " "	145 "
Willenberg, Carl	" " " " "	100 "
Wimpfheimer, Chas. A.	" " " " "	1,000 "
Wooster, Mattie V.	" " " " "	100 "
Wynne, W. E.	" " " " "	200 "
Eliassof, Harry N.	" " " " "	500 "
Gibson, Wm. H.	" " " " "	2,400 "
Hungate, Mary	" " " " "	50 "
Keaveny, James	" " " " "	10 "
Lewisohn Bros.	" " " " "	1,300 "
Lorton, Hattie A.	" " " " "	100 "
Mayo, Edwin L.	" " " " "	600 "
Peck, Thomas	" " " " "	500 "
Tingle, Elizabeth	" " " " "	200 "
William Tebbs	" " " " "	100 "
Estate of Armitage Rhodes, deceased	" " " " "	142 "

Estate of Colonel Rhodes,

deceased	by E. S. Ferry, proxy	333 shares
Morris Eisenberg	" " " " "	1,000 "
Rhodes, Mrs. Mable	" " " " "	7 "
Frances V. Emerson	" " " " "	225 "
Mary E. Hutton	" " " " "	433 "
Ella T. Pearson	" " " " "	50 "
Wm. E. Wallace	" " " " "	50 "
Victor Day	" " " " "	200 "
W. C. Lewis	" " " " "	500 "
H. Hobert Keeler	" " " " "	1,500 "
Alfred Clifford	" " " " "	500 "

And the following stockholders voted against said resolution:

Joseph S. Baer, in person owning	300 shares
J. R. Walker, in person, owning	2,110 "
Peter Geddes, by Jos. R. Walker, proxy	3,100 "

It appearing that of the entire capital stock represented at said meeting, 289,590 shares have been voted in favor of said resolution, and the same constituting more than a majority of all of the issued capital stock of the corporation, the said resolution was declared duly carried by the chairman, and the officers of the company were instructed to carry its purport into full operation and effect.

Upon motion, duly made, seconded and adopted, said meeting was adjourned.

(Signed) E. S. FERRY,

Chairman.

(Signed) D. GAY STIVERS,

Secretary.

State of Utah,
County of Salt Lake, ss.

E. S. FERRY, being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D. 1910; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) E. S. FERRY.

Subscribed and sworn to before me, this 27th day of May, 1910.

HARVEY J. JONES,

Notary Public, in and for Salt Lake County, State of Utah, residing at Salt Lake City in said County and State.

My commission expires Jan. 12, 1912.

State of Utah,
County of Salt Lake, ss.

On this 27th day of May, A. D. 1910, before me, Harvey J. Jones, a Notary Public in and for said County and State, personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of Special Meet-

ing of the stockholders of the Alice Gold & Silver Mining Company, as chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

[Notarial Seal] HARVEY J. JONES,
Notary Public for the State of Utah, Residing at
Salt Lake City, Utah. My commission expires
March 8, 1912.

State of Utah,
County of Salt Lake, ss.

D. Gay Stivers, being first duly sworn, says upon oath: That he is the person who acted as secretary of the special meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D. 1910; that the foregoing is a copy of the minutes of the proceedings, had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid; and that the said minutes, show truly and completely all of the proceedings had at the said meeting.

D. GAY STIVERS.

Subscribed and sworn to before me, this 27th day of May, A. D. 1910.

[Notarial Seal] HARVEY J. JONES,

Notary Public for the State of Utah, Residing at
Salt Lake City, Utah. My commission expires
March 8, 1912.

State of Utah,
County of Salt Lake, ss.

On this 27th day of May, A. D. 1910, before me,
Willard Hamer, a Notary Public in and for said
County and State, personally appeared D. Gay
Stivers, known to me to be the person whose name
is subscribed to the foregoing minutes of the spe-
cial meeting of the stockholders of the Alice Gold
& Silver Mining Company, as Secretary thereof,
and also to the foregoing affidavit, and acknowl-
edged to me that he executed the said instrument.

IN TESTIMONY WHEREOF, I have hereunto
subscribed my name and affixed my Notarial
Seal, the day and year in this certificate first above
written.

[Notarial Seal]

WILLIAM HAMER,

Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My commission expires May 16, 1913.

We, the undersigned, stockholders, and proxies
and representatives of stockholders of the Alice
Gold & Silver Mining Company, present at the spe-
cial meeting of the stockholders of said company,
held on the 27th day of May, A. D. 1910, hereinbe-
fore recorded, do hereby certify that the forego-
ing minutes of the said meeting are full, true and
correct; and we and each of us did at such meet-
ing, and hereby do, concur in each and all of the

resolutions, and proceedings in said minutes recorded.

IN WITNESS WHEREOF, we have this 27th day of May, A. D. 1910, hereunto subscribed our names and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

E. S. Ferry	100 shares
D. S. Ferry, proxy	285,890 shares
F. S. Richards, proxy	2,200 shares
Willard Hamer, proxy	1,100 shares
D. Gay Stivers proxy	300 shares

State of Montana,

County of Silver, Bow, ss.

I hereby certify that the within instrument was ~~filed~~ in my office on the 31st-day of May, A. D. 1910, at 30 min. past 9 o'clock A. M.

Attest my hand:

M. KERR BEADLE, County Recorder.

By J. P. ROSSITER, Deputy.

Filed for record May 31st, A. D. 1910, at 30 min. past 9 o'clock A. M.

M. KERR BEADLE, County Recorder.

By J. P. ROSSITER, Deputy.

State of Montana,

County of Silver, Bow, ss.

I, M. KERR BEADLE, County Clerk and Recorder of said County do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument, as recorded at page 264, in Book "E" Miscellaneous Records, of Silver Bow County, Montana.

Attest my hand and the seal of said Silver Bow County, hereunto affixed this 2nd day of January, 1912.

[Seal]

M. KERR BEADLE,
County Clerk and Recorder.

By.....

Deputy.

By MR. WALSH: I also offer in evidence the minutes of the proceedings of the meeting at which the dissolution of the Alice Company was authorized.

(The said offer was admitted and the minutes of the proceedings were received in evidence marked plaintiffs' Exhibit 3 and are in the words and figures following, to-wit:)

~~ALL RIGHTS RESERVED~~

~~1904-722-7000-202~~

Plaintiff's Exhibit 3.

MINUTES of a SPECIAL MEETING of the STOCKHOLDERS of the ALICE GOLD & SILVER MINING COMPANY, held at the principal office of said Company in the Utah Savings & Trust Company Building, Salt Lake City, State of Utah, on Monday, the 8th day of May, A. D. 1911, at 10:00 o'clock a. m.

The following named stockholders, owning the number of shares of the capital stock of the company hereinafter set opposite their respective names, were present in person or represented through proxies filed with the secretary, to-wit:

E. S. Ferry, in person.

F. S. Bascom by E. S. Ferry and L. O. Evans, proxies

Anna Kate Adams by E. S. Ferry and L. O. Evans, proxies

Edith Adams	00	00	00
John A. Knapp	00	00	00
Edwin G. Wooley	00	00	00
Caroline Adler	00	00	00
C. R. Agnew	00	00	00
Joseph W. Allen	00	00	00
Anna B. Bach	00	00	00
Simon Bank	00	00	00
Barnes Brothers	00	00	00
Helen Beebe	00	00	00
E. H. Bennett (Est)	00	00	00
Maier Berliner	00	00	00
Emily C. Berthet	00	00	00
Kate M. Blindhauer	00	00	00
John Boyle	00	00	00
Meyer Gold	00	00	00
Corinne I. Clarke	00	00	00
Victor Day	00	00	00
John Boyle	00	00	00
Margaret C. Boyed	00	00	00
Charlotte A. Brown	00	00	00
Ernest W. Brown	00	00	00
Mabel Brown	00	00	00
Margaret Brown	00	00	00
Margaret C. Brown	00	00	00
William C. Brown, Jr.	00	00	00
Charles A. Buttrick	00	00	00
Ephrem Catlin	00	00	00
Stephen W. Carey	00	00	00
William Chislett	00	00	00

Anaconda Copper Mining Co. et al. 349

John D. Clarke	by E. S. Ferry and L. O. Evans, proxies		
Juliette F. Clarke	"	"	"
Alfred Clifford	"	"	"
W. L. Collins	"	"	"
Patrick Conlon	"	"	"
John J. Connley	"	"	"
H. M. Curtis, (Est.)	"	"	"
The Daniel Investment Co.	"	"	"
William Henry Dennis	"	"	"
John Douglas	"	"	"
Dennis Driscoll	"	"	"
Emanuel Eising	"	"	"
Rhoda Fuller	"	"	"
Harry N. Eliassop	"	"	"
Charles Gehrman	"	"	"
Stanley Gifford	"	"	"
David Goldberg	"	"	"
Milton F. Goodman	"	"	"
S. R. Graves	"	"	"
Annie E. Gunniss	"	"	"
Edward Haight	"	"	"
Ella B. Hall	"	"	"
W. L. Harpet	"	"	"
Samuel Harris	"	"	"
H. J. Hayes	"	"	"
S. Heidenheimer	"	"	"
Ferdinand Hess	"	"	"
A. J. Huneke	"	"	"
H. Hobart Keeler	"	"	"
James Kirkpatrick	"	"	"
Walter C. Lewis	"	"	"

Lewisohn Brothers by E. S. Ferry and L. O. Evans, proxies

W. F. Love	"	"	"
W. S. Lowry	"	"	"
Michael Lyons	"	"	"
A. D. McConishe	"	"	"
Thomas McHugh	"	"	"
Alice R. MacMillan	"	"	"
Morris Sternbach & Co.	"	"	"
Newberg & Company	"	"	"
Thomas F. Oakes	"	"	"
Peine Webber & Company	"	"	"
Mary Packer	"	"	"
Ada Phipps	"	"	"
Chas. N. Pollak	"	"	"
Edward Reimel	"	"	"
F. B. F. Rhodes	"	"	"
Mabel Rhodes	"	"	"
Francis T. Robinson	"	"	"
Frederick A. Robinson	"	"	"
Maria M. Robinson	"	"	"
Mary E. Robinson	"	"	"
Mary Elizabeth Robinson	"	"	"
Nathaniel Robinson	"	"	"
John D. Ryan	"	"	"
C. T. Shearer	"	"	"
Charles D. Spencer	"	"	"
Thomas Spencer	"	"	"
Frank Stevens (Estate of)	"	"	"
A. C. Strong	"	"	"
W. D. Thornton	"	"	"
Elizabeth Tingle	"	"	"

Anaconda Copper Mining Co. et al. 351

Anna Turner	by E. S. Ferry and L. O. Evans, proxies		
Christopher Turner	"	"	"
W. J. Valentine	"	"	"
William Wagner	"	"	"
Werner & Brown	"	"	"
Sarah W. West	"	"	"
Nathan Westheimer	"	"	"
Mary White	"	"	"
Carl Willenborg	"	"	"
Chas. A. Wimpfheimer	"	"	"
Mattie V. Wooster	"	"	"
Annie D. Young	"	"	"
John List Crawford	"	"	"
James Brennan	"	"	"
Pat Conlon	"	"	"
E. I. Irvine	"	"	"
Caleb Haley & Company	"	"	"
J. J. Flanigan	"	"	"
L. M. Rumsey	"	"	"
Samuel Stein	"	"	"
Mina B. Sheley	"	"	"
Maurice Ober	"	"	"
Henry C. Frank	"	"	"
P. Kunz, Jr.	"	"	"
I. W. Lukach	"	"	"
William Haas	"	"	"
Frederick Nussbaum	"	"	"
E. C. Westervelt	"	"	"
O. B. Van San	"	"	"
A. J. Shores	"	"	"
J. R. Walker, in person.			

Peter Geddes by J. R. Walker, proxy.

Eugene Blum by W. J. Barrett, proxy.

Isaac Blum " "

Edward Blum " "

Isadore Bear " "

J. S. Bear " "

Alphonso Dryfoos " "

Dryfoos, Blum & Co. " "

Joseph C. Stettheimer " "

Kurzman I. Frankenheimer " "

H. S. Everett " "

Margaret Ann Meehan " "

Harry S. Weik, by E. S. Ferry and L. O. Evans, proxies.

Marco J. Medin " " "

M. S. Largey Willard Hamer

It appeared that there were represented at the meeting, in person or by proper proxies, stockholders owning a total of 310,963 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than two-thirds of the entire capital stock of the company.

The meeting was duly organized as follows:

On motion, duly made and seconded, Mr. E. S. Ferry was nominated and elected chairman of the meeting, shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. E. S. Ferry acted as chairman of the meeting.

On motion, duly made and seconded, Mr. L. O. Evans, a suitable person, was unanimously elected Secretary of the meeting.

The chairman thereupon announced that proof had been made by the affidavit of Mr. J. W. Allen, the secreary of the company; also by the affidavit of Blanche H. Newcomb, the principal clerk of the Salt Lake Tribune, a daily newspaper of general circulation, published in the City of Salt Lake, County of Salt Lake, State of Utah; and by the affidavit of Mr. Joseph F. MacDonald, the principal clerk of the New York Times, a newspaper of general circulation, published in New York City, New York, that notice of the holding of said meeting of the stockholders of said company had been duly given by mailing and publication to the stockholders of the company, as required by law.

Said affidavits were exhibited to the meeting, filed with the Secretary, and are respectively in words and figures as follows, to-wit:

State of New York,
County of New York, ss.

I, the undersigned, J. W. Allen, of Elizabeth, Union County, State of New Jersey, DO HEREBY CERTIFY:

That on April 17, 1911, I caused to be mailed to all stockholders of record on that date a copy of the circular letter attached hereto, and that I also, on April 24, 1911, caused to be mailed to such additional stockholders as of record on that date, a copy of the aforesaid notice.

WITNESS my hand this 1st day of May, 1911.

(Signed) J. W. ALLEN,

Secretary, Alice Gold & Silver Mining Company.

Subscribed and sworn to before me, this 1st day of May, 1911.

(Signed) MORRIS MEYERS,
Notary Public, N. Y. Co.

NOTICE OF SPECIAL MEETING OF STOCK-
HOLDERS OF THE

ALICE GOLD & SILVER MINING COMPANY.

To the Stockholders of the Alice Gold & Silver
Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold and Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D. 1911, at the hour of 10 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday, the 21st day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D. 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN, Secretary.

State of New York,
County of New York, ss.

JOSEPH F. MacDONALD, being first duly sworn, says: That he is the principal clerk of the New York Times, a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 14th day of April, A. D. 1911, up to and including the 5th day of May, A. D., 1911.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May first, 1911, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the fifth day of May, A. D., 1911. Said notice above referred to, is as follows:

**NOTICE OF SPECIAL MEETING OF STOCK-
HOLDERS OF THE**

ALICE GOLD & SILVER MINING COMPANY.

New York, N. Y., April 12th, 1911.

To the Stockholders of the Alice Gold & Silver
Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that

a Special Meeting of the stockholders of the Alice Gold and Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday the 21st day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D., 1911, at 10 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN, Secretary.

(Signed) JOSEPH F. MacDONALD.

Subscribed and sworn to before me, this first day of May, A. D., 1911.

(Signed) HUGH W. PARKER,
Notary Public, for the state of New York, residing
at Brooklyn, New York City.

[Seal] N. Y. My Commission Expires March
30, 1912.

Notary Public, Kings Co. Registered
in New York Co.

State of Utah,
County of Salt Lake.

Blanche H. Newcomb, being first duly sworn, says: That she is the principal clerk of the Salt Lake Tribune, a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 15th day of April, A. D., 1911, up to and including the 8th day of May, A. D., 1911.

Affiant further says that pursuant to said instructions she received the said notice, and that the said notice has been published daily in the regular issue of said paper from the 15 day of April, A. D., 1911, to the 8th day of May, A. D., 1911, inclusive. Said notice above referred to, is as follows:

**NOTICE OF SPECIAL MEETING OF STOCK-
HOLDERS OF THE
ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 8th, 1911.

To the Stockholders of the Alice Gold & Silver Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on

Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday, the 21 day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9 day of May, A. D., 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN, Secretary.

(Signed) BLANCHE H. NEWCOMB.

Subscribed and sworn to before me, this 8th day of May, A. D. 1911.

(Signed) WILLARD HAMER,
Notary Public for the State of Utah,
[Seal] residing at Salt Lake City, Utah. My
commission Expires May 16, 1913.

Thereupon, the chairman appointed Mr. L. O. Evans and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the secretary, and the said committee, after an examination of the said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the company, all of which were in regular form, and correct and sat-

isfactory, representing 308,753 shares of the capital stock of the company, which said shares of stock, and the owners or representatives thereof, and the proxies representing the same, are hereinbefore spread upon the minutes of this meeting.

On motion, duly made and seconded and unanimously adopted, the report of the committee was accepted.

Thereupon, the said proxies were accepted and exhibited to the meeting and, after examination, were filed by the secretary in his office.

The chairman then stated to the meeting the purpose for which the same had been called, to-wit, to consider the question of the speedy dissolution of said company, and to vote upon the proposition as to whether the same should be dissolved.

WHEREUPON, the following resolution was duly presented to the meeting:

WHEREAS, all claims and demands against the Alice Gold & Silver Mining Company have been fully satisfied, discharged and paid, and this corporation has disposed of all of its physical properties and business interests; and,

WHEREAS, it is deemed to the best interests of the stockholders of this corporation that the same be dissolved;

NOW, THEREFORE, be it RESOLVED that said corporation, the Alice Gold & Silver Mining Company, be dissolved and that the Board of Directors of said company make application to the District

Court of the Third Judicial District of the State of Utah, in and for the County of Salt Lake, for the dissolution of this corporation, to-wit, the Alice Gold & Silver Mining Company, and take all necessary steps, and do all things necessary and proper under the laws of the State of Utah, to secure the dissolution of this corporation and to cause a proper distribution to be made to the stockholders entitled of all of the assets and property of said corporation.

Upon motion duly made by Mr. L. O. Evans, and seconded by Mr. Willard Hamer, that the said resolution be adopted, the following stock holders voted in favor of said resolution:

Stockholder	No. of shares
E. S. Ferry, in person, owning	100,100
F. S. Bascom, by E.S. Ferry and L. O. Evans, proxies	122
Anna Kate Adams "	25
Edith Adams "	25
John A. Knapp "	400
Edwin G. Woolley, Jr. "	200
Caroline Alder "	200
C. R. Agnew "	200
Joseph W. Allen "	115,098
Anna B. Bach "	200
Simon Bank "	10
Barnes Brothers "	100
Helen L. Beebe "	200
E. H. Bennett (estate) "	200
Maier Berliner "	300
Emily C. Berthet "	1,400

Anaconda Copper Mining Co. et al. 361

Kate M. Blindauer	by E.S.Ferry and L.O.Evans, proxies	25
John Bogle	" " "	50
Meyer Gold	" " "	100
Corinne I. Clarke	" " "	10
Victor Day	" " "	200
Margaret C. Boyed	" " "	100
Charlotte A. Brown	" " "	75
Ernest W. Brown	" " "	3,800
Mabel Brown	" " "	20
Margaret Brown	" " "	20
Margaret C. Brown	" " "	15
William C. Brown, Jr.	" " "	20
Charles Buttrick	" " "	300
Stephen W. Carey	" " "	100
Ephrom Catlin	" " "	200
William Chislett	" " "	250
John D. Clarke	" " "	100
Juliette F. Clarke	" " "	10
Alfred Clifford	" " "	500
W. L. Collins	" " "	42
Patrick Conlon	" " "	100
John J. Conley	" " "	25
N. M. Curtis (estate)	" " "	500
The Daniel Inv. Company	" " "	200
William Henry Dennis	" " "	50
John Douglas	" " "	100
Dennis Driscoll	" " "	200
Emanuel Eising	" " "	100
Rhoda Fuller	" " "	100
Harry N. Eliassop	" " "	500
Charles Gelmann	" " "	50

Stanley Gifford by E.S.Ferry and L.O.Evans, proxies	4,500
David Goldberg	100
Milton F. Goodman	300
S. R. Graves	54
Annie E. Gunnis	200
Edward Haight	100
Ella B. Hall	25
W. L. Harper	100
Samuel Harries	1,000
H. J. Hayes	54
S. Heidesheimer	200
Ferdinand Hess	200
A. J. Hüncke	100
H. Hobart Keeler	1,500
James Kirkpatrick	100
Walter C. Lewis	500
Lewisohn Brothers	1,200
W. F. Love	100
W. S. Owry	100
Michael Lyons	100
A. D. McConishe	300
Thomas McHugh	100
Alice R. MacMillan	1,500
Morris Sternbach & Co.	300
Newberg & Company	13,625
Thomas F. Oakes	300
Paine Webber & Co.	300
Mary Packer	10
Ada Plippe	100
Chas. N. Pollak	1,500
Edward Reimel	400

<i>Anaconda Copper Mining Co. et al.</i>	363
F. B. F. Rhodes by E.S.Ferry and L.O.Evans, proxies	300
Mabel Rhodes	7
Francis T. Robinson	1,600
Frederick A. Robinson	1,600
Maria M. Robinson	1,800
Mary E. Robinson	26
Mary Elizabeth Robinson	1,800
Nathaniel Robinson	1,300
John D. Ryan	60,656
C. T. Shearer	50
Charles D. Spencer	350
Thomas Spencer	100
Frank S. Stevens (estate)	500
A. C. Strong	100
W. D. Thornton	58,161
Elizabeth Tingle	200
Anna Turner	300
Christopher Turner	350
W. J. Valentine	100
William Wagner	100
Werner & Brown	600
Sarah W. West	163
Nathan Westheimer (est.)	900
Mary White	20
Carl Willenberg	100
Chas. A. Wimpfheimer	1,000
Mattie V. Wooster	100
Annie D. Young	100
John List Crawford	2,000
James Brennan	200
Pat. Conlon	100

E. I. Irvine	by E.S.Ferry and L.O.Evans,proxies	25
Caleb Haley & Company	" "	200
J. J. Flanigan	" "	200
L. M. Runsey	" "	100
Samuel Stein	" "	10
Mina B. Sheley	" "	200
Maurice Ober	" "	750
Henry C. Frank	" "	200
P. Kunz, Jr.	" "	200
I. W. Lukach	" "	100
William Maas	" "	2,700
Frederick Nusbaum	" "	300
E. C. Westervelt	" "	1,000
C. B. Van San	" "	300
A. J. Shores	" "	300
Harry S. Weil	" "	100
Marco J. Medin	" "	500
M. S. Largey by E. S. Ferry and Willard Hamer, proxies		100

Total

297,578

And the following stockholders voted against the said resolution:

Stockholder	No. of Shares.
J. R. Walker in person	2,110
Peter Geddes, by J. R. Walker, proxy	3,100
Eugene Blum, by W. J. Barrett, proxy	400
Isaac Blum	1,600
Edward Blum	1,175
Isadore Bear	200
J. S. Bear	500

<i>Anaconda Copper Mining Co. et al.</i>		365
Alphonso Dryfoos	by W. J. Barrett, proxy	600
Dryfoos, Blum & Co.	" "	400
Joseph C. Stettheimer	" "	1,350
Kurzman I. Frankenheimer	" "	200
H. S. Everett	" "	700
Margaret Ann Meehan	" "	1,050

Total 13,385

More than two-thirds of the entire capital stock of the company having voted in favor of said resolution, the same was by the chair duly declared carried, and the officers of the company were instructed to carry its purport into full operation and effect.

Upon motion, duly made, seconded and unanimously adopted, the said meeting of the stockholders of said company was adjourned.

E. S. FERRY,

Chairman.

L. O. EVANS,

Secretary.

State of Utah,

County of Salt Lake, ss.

E. S. FERRY being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company, in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D. 1911; that the foregoing is a copy

of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

E. S. FERRY.

Subscribed and sworn to before me this 9th day of May, A. D., 1911.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913

State of Utah,

County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me, WILLARD HAMER, a Notary Public, in and for said County and State, personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of special meeting of the stockholders of the Alice Gold & Silver Mining Company, as Chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

State of Utah,
County of Salt Lake, ss.

L. O. EVANS, being first duly sworn, says upon oath: That he is the person who acted as secretary of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D. 1911; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

L. O. EVANS.

Subscribed and sworn to before me, this 9th day of May, A. D., 1911.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.
Residing at Salt Lake City, Utah.
My Commission Expires May 16, 1913.

State of Utah,
County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me, WILLARD HAMER, a Notary Public in and for said County and state, personally appeared L. O. EVANS, known to me to be the person whose name is subscribed to the foregoing minutes of

special meeting of the stockholders of the Alice Gold & Silver Mining Company, as secretary thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

WE, the undersigned stockholders, and proxies and representatives of stockholders of the Alice Gold & Silver Mining Company, present at the Special Meeting of the stockholders of said company, held on the 8th day of May, A. D., 1911, hereinbefore recorded, do hereby certify that the foregoing minutes of the said meeting are full, true and correct; and we, and each of us, did, at such meeting, and hereby do, concur in each and all of the resolutions and proceedings in said minutes recorded.

IN WITNESS WHEREOF, we have this day of May, A. D. 1911, hereunto subscribed our names and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

E. S. FERRY Owning and representing 100 shares.

L. O. EVANS, E. S. FERRY Representing 297,478 shares by proxy.

WILLARD HAMER Representing 100 shares by proxy,

WE, your committee appointed to examine and report upon the proxies submitted to the Special Meeting of the Stockholders of the Alice Gold & Silver Mining Company, at its meeting on May 8, 1911, hereby report that we have examined all of such proxies, and we find that there has been filed with the secretary proxies from the stockholders of the company, representing 308,754 shares of the capital stock of the company. Said proxies so examined are herewith returned with this report.

L. O. EVANS,
WILLARD HAMER,
Committee.

State of Utah,
County of Salt Lake, ss.

I. W. Ferry, being first duly sworn, deposes and says:

That he is a citizen of the United States, over the age of twenty-one years; that he resides in Salt Lake City, State of Utah, where he has resided for a number of years last past.

That he acted as Chairman at a special meeting of the Stockholders of the Alice Gold & Silver Mining Company, held at the principal office of said Company in the Utah Savings & Trust Company Building, Salt Lake City, State of Utah, on Monday, the 8th day of May, A. D. 1911, at ten o'clock A. M. of said day.

That the foregoing and hereunto annexed first thirteen pages is a full, true and correct record of all the proceedings had at said stockholders' meeting, and that the foregoing and hereunto annexed nineteen pages is a full, true and correct copy of the records of said Alice Gold & Silver Mining Company, pertaining to the said meeting of the stockholders of said Alice Gold & Silver Mining Company; that the foregoing nineteen pages is a carbon copy of the original type-written records of said meeting, as the same are kept by said Company, and the same was furnished by me to J. R. Walker and his Counsel, at his request.

E. S. FERRY.

Subscribed and sworn to before me this 27th day of December, 1911.

G. S. MARR,

Notary Public.

My commission expires June 18, 1915.

By MR. WALSH: I will offer the map, Plaintiffs' Exhibit 1, identified when Mr. Goodale was on the stand. (Whereupon said map was introduced and received in evidence.)

By MR. WALSH: I offer in evidence the table from page 23 of the report of the United States Geological Survey for 1910, which shows the copper production of the United States as follows:

State	1910
Alaska	4,311,026
Arizona	297,250,538
California	45,760,200

<i>Anaconda Copper Mining Co. et al.</i>		371
Colorado	9,307,497	
Idaho	6,877,515	
Michigan	221,462,984	
Montana	283,078,473	
New Mexico	3,784,609	
Nevada	64,494,640	
Oregon	22,022	
South Dakota	43	
Utah	125,185,455	
Washington	65,021	
Wyomng	217,127	
Eastern States and unapportioned	18,342,359	
Total.....		1,080,159,509

[Testimony of Howard C. Buzzo, for Complainants]

HOWARD C. BUZZO, called as a witness on behalf of the complainants having been first duly sworn testified in substance as follows:

My name is Howard C. Buzzo. I am living at Walkerville, Montana. I have been acting superintendent of the Alice property since November, 1906. The character of my work has been looking after leases and doing office work. The Alice mine office is at Walkerville. It is on the Alice millsite claim adjoining the Alice claim. My father preceded me in that position. Since 1906 the work on the property has been confined practically to the work of lessors. Besides myself, two watchmen were regularly employed by the Alice Company. The number of lessors for the Alice for the last four or five years has varied from eight

to thirty. Some of them were simply taking ore out in the upper levels and some of them had shafts and worked from the surface and used windlasses. The lessor would take a certain portion of the ground and get whatever he could out of it and pay a certain royalty out of what he took out. The ore was shipped to the American Smelting & Refining Company at East Helena, to the Washoe smelter at Anaconda, the Washoe Smelting Works and the Butte Smelting Works. One hundred and fifty feet was the deepest any of them went. During that time Mr. John Gillie was my superior officer. I reported to him in regard to operations. Up to a little over a year ago we used to send the reports to Mr. J. W. Allen of New York in care of the Alice Gold & Silver Mining Company. He was secretary or president, I believe, but I got my orders in Butte from Mr. Gillie. We had occasion to consult attorneys about the business of the Alice Company on two or three occasions in regard to various matters that came up in regard to real estate and so on, and on such occasions I went to Capt. D. Gay Stivers. He seemed to be identified with the Alice Company. The first I knew of it was his attendance at the stockholders meeting in Salt Lake and his sending in his expenses in connection therewith. I have not been obliged to consult him during the last year. That was three or four years prior to last year. I found Capt. Stivers in the Hennessy building on the sixth floor in the legal department of the Anaconda Copper Mining Company. Mr. A. C. Carson is agent

of the Alice Gold and Silver Mining Company and also a director, but he simply counter-signed checks, but that must have been three years or more ago. He left Butte. Checks were also counter-signed by Mr. Gillie and Mr. Allie. Mr. Allie's office is on the sixth floor of the Hennessy Building. You enter Mr. Allie's office through the Anaconda Company's office, waiting room; that is, the outside entrance admits you to the general waiting room the legal department of the Anaconda Copper Mining Company and there you send in word and you are admitted to the office of Mr. Allie. I also talked to Mr. Dunsey, assistant to Mr. Gillie, in regard to the affairs of the Alice Company in Butte. The check for my services was counter-signed the same as the other checks. The account was kept at the Daly Bank & Trust Company at Butte. Since this property has been taken over, the general office of the Anaconda Company attends to the cash end of it. Prior to that time, the expenses of conducting the affairs of the company were greater than the amount derived from its lessors. The deficiency was made up through the New York office of the Alice Gold and Silver Mining Company prior to about a year ago. When there was a deficit Mr. J. W. Allen, secretary and treasurer of the Alice Company, drew on New York and we had an account with the Daly Bank & Trust Company.

Cross Examination.

I have resided in Butte and vicinity for nearly eighteen years. I came to Butte with my father,

who came as superintendent of the Alice Company. He succeeded Capt. Hill. At the time we moved up to what is known as the superintendent's house on the Alice property, and I have been more or less intimately acquainted and familiar with the property since that time. The Alice property was not being actively worked in November, 1894. Mining operations were suspended when my father and I came to Butte. They were attempting to run the mill on custom ore and partly on tributors' ore. The tributing system means that men are given leases and pay a royalty of twenty-five per cent on the mill returns. As a rule these miners work some of the low spots and in the stringers adjacent to the old workings. The company could not profitably work these places that are worked by the tributors. The shaft of the Alice mine was about fifteen hundred feet when we came to Butte. They had let water float up to the thousand foot level. That was because they thought it was not necessary at that time to work down there, and that the shaft would remain in better condition if it was flooded. All that I could learn in regard to the mine was that below the ten hundred foot level they had to stope, and that the good grade ore was from there up, and outside of that they had nothing but a low grade ore. We closed the mill down in 1899, and the water was pumped to use in the mill, and we had no further reason to pump it and it came to the seven hundred foot level. I am only familiar with the portion of the workings above the flooded portion

subsequent to 1899. Some of the tributors had been working from the surface by reason of a small shaft and windlass scattered about on several claims. We have two or three claims there and they have been working on a dozen of them at different times. In most cases these veins are small, but once in a while they will run across an old filler that has been let go, a pay streak before, something that was left. I do not know of any place in the Alice mine where the company could enter into the mining business and carry it on at a profit at the present time. The Alice contains a large body of lead and zinc ores. In the matter of treatment of ores, it is probably the most refractory zinc ore that is known. I do not know of any smelting process by which the zinc ores of the Alice Company can be worked at a profit. Frequently attempts have been made to work these ores. In addition to the two watchmen and myself, from time to time, as it was necessary, others were employed and paid by the Alice Company. They worked under my supervision. I consulted Mr. Gillie in regard to anything that we might call operations in regard to the business outside of the Alice itself; anything at all that would come up. I regarded Mr. Gillie's advice and suggestions with reference to any mining proposition as a benefit. I have also consulted Mr. Dunsey, who is assistant to Mr. Gillie. He is regarded as a competent mining man. I also consulted with Capt. Stivers with reference to the law regarding squatters' rights and so on. A number of people squatted upon

the surface belonging to the company and erected small houses. The advice, suggestions and assistance that I received from Capt. Stivers in the legal department was helpful to me, and through it the rights of the Alice Company were protected. I attended to the banking of the Alice Company. I obtained some returns from these ores for the company, and I deposited that money to the credit of the Alice Company up to the time the property was taken over by the Anaconda Company. I said that the receipts were not sufficient to take care of the expenditures which consisted of insurance, taxes and the watching of the property. The policy of the company was to endeavor to earn as much money as possible in order to earn the fixed charges against the company's property. At the time the transfer was made to the Anaconda Company, I believe the Alice Company was indebted to the Butte Coalition Company.

Redirect Examination.

The Butte Coalition has been the owner of a majority of the Alice stock for some years. There didn't seem to be any difference in the way conditions were there and the way business was conducted when the Butte Coalition Company became the owner of a majority of the stock of the company. The mining operations, of course, that have been carried on by the Alice Company are trifling and inconsequential in comparison with the mining operations carried on in the city of Butte. There is a comparatively insignificant equipment at the Alice as compared with the

Badger State or the North Butte. After the Alice shaft houses burned in 1902, we put some other machinery which we had in its place, making a smaller plant, and we bought very little machinery there prior to 1899, nor have we established any new equipment except that we took some machinery that was around there. The process of the old Alice mill was pan amalgamation. That process for the reduction of ores is obsolete in these days, except in some localities where they cannot use anything else. I do not know of any of them operating in the state of Montana now and have not been operating since 1900 that I know of. The main lode running through the Alice property is called the Rainbow. It is called the Rainbow lode because it forms a kind of an arc—on the western end it runs northeast and on the eastern end it runs southeast. To the east of the Alice mine this vein extends into the Poser Claim, the Elm Orlu, the Black Rock, the Niagara and the Butte Superior. They are mining these zinc ores on this same lode over on these claims, but the ores are not similar in character. The last big attempt that was made to work the zinc ores on the Alice was in 1910. That was ore that we shipped to Colorado at that time. There was equipment on the property for working zinc ores in 1905, and 1906—the Wisner mill. The North Zinc Company leased the mill for the purpose of treating the zinciferous ores, but it failed and burned up. I think the failure coincided with the burning. The North Zinc Company put up a mill there, and they were oper-

ating zinc ores and the mill burned down and they quit. I endeavored to find some way to increase the earnings of the property through the treatment of zinc ores. That effort did not take the form of any exploration and development below the six hundred.

Q. Now, no one really undertakes in that region in Butte to do any exploration or development at a less depth than from twelve to fifteen hundred feet, do they?

A. If they have original ground they certainly do.

Q. Do you know of any ground in that vicinity that is worked for copper, for instance, from the surface?

A. No, there is no ground near there that is worked for copper that I know of.

Recross Examination.

Before the Alice works burned down they were equipped with machinery of an old pattern. It was inadequate at that time. It was large enough for anything that the Alice was doing. As a mining man I would not regard it as being a good business policy to place extensive equipment in the Alice mine at the present time. I know positively that the operations of the North Zinc Company were not profitable upon the Alice ores, and they switched over the ore from the Lexington and other mines. The North Zinc Company, on account of the action of the Alice Company in the matter of the presentation of claims, etc., went through a receivership and bankruptcy. The re-

lationship between these two companies was that the North Zinc Company leased the sixty stamp mill building, and had some arrangement, but I cannot define it, for treatment of the Alice ore. We have a lot of zinc ore exposed now, if we could treat it properly, which would be sufficient for us to go ahead with any plant. Defendants' Exhibit A shows the profit or the losses over the running expenses since 1894 to 1911 from the ores, improvements, etc., that were sold. It was prepared by myself from the reports, accounts, etc. of the company. They were operated ten years, I think.

By MR. KELLEY: I will ask to introduce this, if the court please. I may say to the court that with the exception of the year 1894, when the company's operations show on a production of \$224,336.00 as against disbursements of \$226,597.00, a loss of \$2,261.04, that the operations of the company showed continuously a loss with the exceptions of the years, ninety-five, ninety-six, ninety-seven and ninety-eight, when the company made a profit varying from ninety-seven thousand to twelve thousand dollars in ninety-eight, the list being gradually diminishing with the diminished operations of the company.

The total amount of the dividends shown is \$1,075,000.00. These dividends have been paid by the company, the first dividend being paid March 15, 1881, and the last dividend was paid April 27, 1898.

By MR. WALSH: I will offer it in evidence.

(The said document was received in evidence and marked Plaintiffs' Exhibit 4).

Said exhibit is in words and figures following, to-wit:

"LIST OF ALL DIVIDENDS PAID

BY

ALICE GOLD AND SILVER MINING COMPANY.

400,000 Shares

Par Value, \$25.00

Dividend No.	Amount per Share	Date Payable	
1	10 cents	March	15, 1881
2	do	April	15, 1881
3	do	May	16, 1881
4	do	June	15, 1881
5	do	July	15, 1881
6	do	August	15, 1881
7	do	September	15, 1881
8	do	October	15, 1881
9	do	November	15, 1881
10	do	December	15, 1881
11	12½ cents	June	2, 1884
12	12½ cents	September	1, 1884
13	12½ cents	December	1, 1884
14	12½ cents	March	2, 1885
15	6¼ cents	June	8, 1885
16	do	September	10, 1885
17	do	December	10, 1885
18	do	March	10, 1886
19	do	June	15, 1886
20	do	September	13, 1886
21	do	December	10, 1886
22	do	December	12, 1889
23	do	May	10, 1890

Anaconda Copper Mining Co. et al. 381

24	do	July	1, 1890
25	do	September	10, 1890
26	do	December	8, 1890
27	do	April	30, 1891
28	do	August	25, 1891
29	do	November	25, 1891
30	5 cents	December	31, 1896
31	do	April	7, 1897
32	do	October	25, 1897
33	do	December	20, 1897
34	do	April	27, 1898

Total Dividends Paid \$1,075,000"

(Witness Excused.)

Whereupon depositions of John D. Ryan, A. H. Melin, J. W. Allen, Isaac Blum and Thos. W. Lawson were read in evidence as follows:

[Testimony of John D. Ryan, for Complainants]

Deposition of John D. Ryan, a witness called in behalf of the complainants being by Commissioner duly sworn, testified in substance as follows:

My name is John D. Ryan and I reside at Butte, Montana. I am a director of the Anaconda Copper Company. I have had official connection with that company since 1903. Toward the latter end of 1903 or the first of 1904 I was made president of the company. I was president until 1909. I resigned the presidency in 1909, and since that time have been a director. Mr. B. B. Thayer has been president since that time. I am the president of the Amalgamated Copper Company and a member of the board of directors. I have been

a director of that company I think since 1903, and president since June, 1909. I was not officially associated with either of these companies during the organization of the Amalgamated Copper Company. I was living in Denver, Colorado in 1899, and until March, 1900, when I went to Chicago to leave there and go to Montana in 1901, arriving in Butte on the 22nd of February. There was a good deal of litigation between Heinze and his companies and the Amalgamated Companies when I came to Montana. It is true that that litigation was eventually disposed of by the purchase of practically all of the Heinze properties in Butte. The purchase was consummated in February, 1906. The title to the Heinze properties passed to Thomas F. Cole and by Thomas F. Cole was transferred to the Red Metal Company. I had something to do with the negotiations that eventually led to the purchase. They had been pending, I should say, more than a year. I took them up within two years after I went with the company. It was either the last week in May or the first week in June that I became a director of these companies. It was considered desirable on the part of the Amalgamated Copper Companies that the Heinze litigation should be terminated. There was no one directly associated in the negotiations with Heinze who had any connection with the Amalgamated Copper Company but myself and attorneys who were acting for me. These negotiations were all with Mr. F. Augustus Heinze. I did not feel that I was representing the Amalgamated

Copper Company in these negotiations. I had no authority from the Amalgamated Copper Company to proceed with the negotiations, and as a matter of fact was never acting for the Amalgamated or its interests except in so far as the dismissal of the litigation would prove to be to its interests, and I was trying to bring that about as a part of the trade. As far as I know my associate directors of the Amalgamated Copper Company were not at all times conversant with the fact that negotiations were being conducted by me, with the exception of Mr. Rodgers. I don't remember discussing with any of the other directors anything at all in connection with the negotiations. Mr. Rodgers was then president of the company. He was desirous of terminating the litigation, but as to whether the Amalgamated Copper Company was or was not would be a matter of opinion. There never had been any connection and never had been any discussion with him brought on that point. I am quite sure that Mr. Rodgers was desirous of ending the litigation, he being conversant with it, and I am quite sure that we were in accord as to the desirability of doing away with the litigation. Ten and one-half million dollars was the cash paid for all of the Heinze properties. With reference to some provision for obtaining the money with which to make this purchase, as I remember it, I made the allotments of stock that brought the money. There was not any difficulty about raising the money. The requests for allotments had aggregated very

much more, in fact several times the total amount of stock that it proposed to issue long before money had to be provided. As far as I recall I made the allotments of stock myself and without any directions from anybody. It is correct that the transaction took this course: The transfer was made to Mr. Cole and from Mr. Cole to the Red Metal Mining Company and then the Butte Coalition Company was organized and it became the holder of the stock of the Red Metal Mining Company. I don't remember any public notice I gave of the purpose to organize the Red Metal Mining Company. There was not any effort to hide the fact that the Red Metal Company was organized for the purpose of acquiring these properties and such other properties as it might wish to acquire. I do not recall any public statement to that effect. I had conferences with a number of men with reference to taking over the Heinze property, some of them connected with the Amalgamated Company and many of them were not; men that were perfectly responsible and good for anything they undertook to do, and I made the allotments of stock after therequests had been made by those men. The original list of those subscribers was over one hundred and fifty, I think. I had requests for subscriptions and had talked with people who wanted the allotments—who wanted the stock—and I knew all that I had to do was to send word to those people and they would send in their money. Mr. Cole was a man of large means who was interested in mining in

the Butte camp and elsewhere. He had a large following, and he was willing to buy the properties and take his chances on turning them over to a company that could be organized later. As far as I could tell that was his position in the property. Aside from whether he had anything at all to do with the negotiations which resulted in the agreement to purchase, he was associated with me in the actual acquisition of the properties. At that same time Mr. Cole and I were joint stockholders in other mining ventures. In the literature regarding this subject, the expression "Cole-Ryan Properties" was frequently used in the newspapers. Previous to the organization of the Red Metal Company, I don't know that that term was applied to any company except the North Butte Company, and I had nothing to do with the organization of that. I don't remember that I ever heard the term "Cole-Ryan Property" in connection with any other property. I did not invite subscriptions of stock to the Red Metal Company. I think the Butte Coalition and the Red Metal were organized at the same time. The intention all along was to organize the Butte Coalition to hold all of the stock of the Red Metal, except directors' qualifying shares. Mr. Cole paid Mr. Heinze ten and one-half million dollars, and transferred the properties acquired from Mr. Heinze to the Red Metal Company for the same amount. I don't recall just how the money was provided by Mr. Cole. I cannot recall that. I think with the exception of the incorporators qualifying shares,

the stock of the Red Metal Company was originally issued to Mr. Cole for the property he transferred to it, and that stock was then transferred to the Butte Coalition Company, I think. The Red Metal Company had a capital stock of eleven million dollars. The Butte Coalition paid for the Red Metal stock and the Alice Gold and Silver Mining Company stock that was transferred to it, the lump sum of eleven million dollars. The subscription to the Butte Coalition was for its entire capital stock, that is, one million shares at fifteen dollars par. The four million was the excess over and above the eleven million dollars paid for the Red Metal, for the Heinze properties and the stock in the Alice Companies in cash in the treasury of the company. I haven't the original subscription list. I don't think it is in the files. It was in my own personal memoranda and it was not a company matter, and as far as I know, I haven't it, and I don't know why it should be in those files, and I don't think it is.

MR. GARVER: This question is objected to as assuming that there was a formal subscription list, whereas the testimony of the witness indicates that the arrangement, if any, made with the subscribers was entirely informal.

I don't know that there was a regular subscription list. As I say, I made the allotments of stock to subscribers, people who wanted stock in the company. There was no such thing as a formal subscription list. I presume I had some written memorandum about the matter. I don't know

just in what form I carried it. I don't suppose I carried it all in my head, but it was not anything but a distribution of stock to people who requested it, made by me personally. Mr. J. W. Allen was secretary of the Butte Coalition Company, at the time it was dissolved. He was likewise secretary, I think, of the Alice Company. He is here now. He is now secretary and treasurer of the International Smelting & Refining Company, and I think he has some connection with the Green-Canaan Company. The title to all the Red Metal properties passed to the Anaconda Company in 1910, and I think the Red Metal Company has been dissolved. I presume that Mr. Allen has the books and records of the Butte Coalition. I cannot recall the principal subscribers, there being over one hundred and fifty I think. I was a subscriber. The entire amount of the capital stock—a million shares—were subscribed by these one hundred and fifty people or thereabouts. I am not sure who the officers were immediately after its organization, but within a few weeks any how Mr. Thomas F. Cole was president, W. D. Thornton, vice-president, J. C. Lalor, C. D. Fraser and James O'Grady were directors. The Thomas F. Cole is the Mr. Cole we have been referring to. Mr. Thornton is a resident of Butte and Mr. Lalor was a former resident of Montana. I think he was living at that time in New York. I don't think he had ever been in the employ of the Anaconda Copper Mining Company. He was at one time manager of the estate of Marcus Daly and prior

to Mr. Daly's death he was his private secretary. Mr. O'Grady was at that time connected with the Boston and Montana Company at Great Falls and resigned his position there to come on and accept the treasurership of the Butte Coalition Mining Company. The Boston & Montana company at that time was one of the subsidiaries of the Amalgamated Company. He afterwards returned to Great Falls, resuming his position with the Boston and Montana. The officers of the Butte Coalition were Thomas F. Cole, president; I, myself was vice-president, Urban H. Broughton, James Hoatson, Chester Congdon, B. B. Thayer, F. L. Ames, William B. Dickson and A. C. Carson were directors. Mr. Broughton was the manager of the United Metals Selling Company. At this time, that company is a subsidiary company of the Amalgamated. Then it had no interest in the stock of the company, but the subsidiary mining ~~company~~^{companies} of the Amalgamated were selling metal through the United Metals Selling Company. Mr. Hoatson is a mining man who lives at Calumet, Michigan, and was president of the North Butte Mining Company, and is a brother-in-law of Mr. Cole. Mr. Congdon is a resident of Duluth, Minnesota, and was interested in the North Butte Mining Company. He was an old time associate of Mr. Cole. Mr. Thayer, the gentleman who is now the president of the Anaconda Company was a director of the Anaconda and Amalgamated at that time, I think. Mr. Ames is a Boston man. He had been a stockholder in the North Butte Com-

pany, but had no official connection with any of the companies. Mr. William B. Dickson had no connection with any of the companies that the Amalgamated was connected with. He was connected with the United States Steel Corporation, one of its officers, and lived in New Jersey. Mr. A. C. Carson was general manager of the North Butte Mining Company and was made general manager of the Red Metal Mining Company when it took over the Heinze properties, and James O'Grady is the same O'Grady who was a director of the Red Metal, and I think he became treasurer at one and the same time of both of these companies. The operation of these properties was thereafter conducted by the Red Metal Company with Mr. Carson in charge as general manager. I could not tell as to who the Butte attorneys for the company were. I think that Messrs. Kelley and Evans did most of the legal work for the Red Metal Company. I don't know that the Butte Coalition had any attorneys in Montana. These gentlemen were at the same time the attorneys for the Anaconda Company, and I would say all of the business of the Amalgamated Companies and all of the subsidiary companies and the Red Metal Company was done at the same offices. Mr. Gillie is general superintendent of mines. All of the general work of the mining operations is under his supervision, including the engineering work. His offices in Butte are in the same building and on the same floor with Messrs. Kelley and Evans, the attorneys for the company, the 6th

floor of the Hennessy Building. The office of the Red Metal Company after it was organized was in the Largey Building on Broadway in Butte. As far as I know, Mr. Gillie had nothing to do with the mining operations of the Red Metal Company. The litigation in the Butte camp, so far as the Amalgamated properties were concerned and the property formerly belonging to Mr. Heinze was all dismissed when those properties last mentioned passed to the Red Metal. My relations, so far as that feature of the thing was concerned have always been entirely cordial with the Red Metal. I never had a controversy of any character with the Red Metal of any of the Amalgamated Company's constituent companies that found its way into court. The adjustment of rights as to ore bodies was left to a board of engineers. We have had differences of opinion with the North Butte as to some rights. They have always been worked out in a friendly way by conferences between officials and engineers of the two companies. In the case of the Ballaklava Mining Company, we were not so fortunate as we have a law suit pending with them at the present time affecting such rights. Differences up to the time we purchased Senator Clark's properties were handled much in the same way. There were conferences between Senator Clark's engineers and ours, discussion of the respective rights, free examination of properties on both sides, comparison with notes and generally, as you might call it, laying the cards on the table in a perfectly friendly way. The law-

yers and engineers worked together in these controversies. There had been no adjustment of the controversy between myself and Senator Clark, at the time we purchased his property. We had not brought any action against him or threatened one.

The acquisition of the Alice stock originated in an option they had from the Walkers of Salt Lake and people associated with them, taken sometime in the summer of 1905, on a majority of the stock of the Alice Company. As I recall it now, under this option they were to deliver me a clear majority of the stock and an additional amount up to a certain limit if other people wanted to join them in the sale, people that they had not been able to reach. The same blocks of stock had been under option for something like two years before, to a man named Wizner, who was experimenting with a zinc process at the old Alice mill, and he forfeited his option, and they entered into negotiations with me. After some several talks with Mr. T. W. Buzzo, who was then manager of the Alice properties in Butte, Mr. M. H. Walker, and O. K. Lewis, and a number of other gentlemen came from Salt Lake to see me at Butte, and I took the option at one dollar and a half a share or a basis of \$600,000 for the property. The company at that time was in debt somewhere around twenty or twenty-five thousand dollars. The option was taken in the name of W. D. Thornton. I don't know where the original is. It contemplated the purchase of at least a majority of the shares of the Alice stock. There were four hun-

dred thousand shares in the company and they were bound to deliver at least a majority and then there was as I remember it, an additional number of shares which they had a right to deliver to me during the life of this option with their own stock, and the reason they could not make the number of shares definite was that they wanted to give the right to other people to sell with them if they were so disposed. I am sure the price was a dollar and fifty cents a share. I got the option sometime in the summer of 1905 and finally made the purchase of the stock under the option in February, 1906. I don't think I had in mind the organization of the Butte Coalition when I took the option; at least that is as I remember it now, but some months after taking the option, when the negotiations with Mr. Heinze had proceeded to the point where I was quite sure we were going to buy his properties, I thought it would be a very good thing to include this Alice stock. I think before the purchase was made it was fully decided to sell the Alice stock with the Red Metal stock to the Butte Coalition. Many of the properties of the Red Metal are contiguous; a good many of them are outlying properties, but the important properties were contiguous to the properties of the Amalgamated subsidiaries—the Anaconda, Boston & Montana, Butte & Boston, the Parrot and others. The Alice properties are far to the northwest and outside of any territory that has ever produced copper in paying quantities. The Corraiss is the

most northwesterly of what are the Red Metal properties and I should say it was a half a mile from there to the Alice property, to the properties that the Alice had worked in any large way. There was no likelihood of the Alice property being worked in conjunction with the Red Metal properties. The Boston & Montana and the Butte and Boston, constituent companies, had properties lying to the south and contiguous, I think, to the Alice property. The Belle of Butte is adjoining the Alice Company's property on the south. The Moose of the Boston and Montana Company is the only other property of the Amalgamated adjoining the Alice property except on the extreme west. The Transit claim of the Butte and Boston Company and the Belcher claim of the Anaconda Company, but there has been no extensive work done in a great many years in any of that territory; that is, on the west end of the Alice properties. There has been a little work done on what is generally called leases in the Butte Camp on the Belle of Butte property. The Anaconda Company now owns the Mill View lying immediately south of the Poser. Immediately south is the Badger State. It belongs to the Anaconda Company now. It was at that time one of the Boston and Montana Company's properties. At the time I acquired this stock I don't think there was any development except on the Badger State. I think the development of the Badger State as it has been made by our companies was subsequent to the time that stock was purchased. It is producing very largely

at the present time. I should say it was 1910 before we took any quantity of ore from there. The Anaconda Company now owns the Auraria. It was one of the properties of the Boston and Montana Company. The Magna Charta is one of the Alice properties. The other principal claims of the Alice are the Alice, Blue Wing, Midnight, Curry, the Rising Star, Walkerville and the Pay Master.

As I recall it, the only encouragement I got in taking the Alice option was from Mr. Buzzo, the man who was then in charge of the property for the Alice Company. He had tried in every way he could to sell the stock for the people he was working for, and he talked with me a number of times and I came to the conclusion that at a price of approximately six hundred thousand dollars for that group of claims, considering the history of the district with the fact that they had been large producers of silver and with the expectation that zinc some day would be an important product in Butte, I thought it was worth the gamble. There was not any engineer who gave me any encouragement that the property was worth buying. I think that my action in taking the option was generally criticized by our own engineers and directly to me. I had nothing like a written report upon the property prior to my purchase of it. Mr. Wissner had a zinc process and he had people put up money to try out this process, and took an option on the Alice property before trying the process out on Alice ores. It was an absolute utter

failure as has been every other process that has been tried out on Alice ores. Immediately east of the lower portion of the Magna Charta is the Poser which is one of Senator Clark's properties, and east of that the Elm Orlu, also one of his. I think the Poser is producing some copper ore and the Elm Orlu some copper, but mostly zinc. The Poser is producing zinc, too, but I think they are getting some fairly good copper ore from the Poser. The production of copper ore in either of these two being very recent. These are the only two mines that were producing which he retained after the sale of his principal mines. Since that time the Poser I think has produced a reasonable amount of copper, and copper ore has been taken from the Elm Orlu, but it is not an important body, as far as copper ore goes. The Butte and Superior Company are operating on the Black Rock properties east of Butte producing zinc ores. These various claims that is, the claims of the Butte Superior, being operated for zinc, the Elm Orlu, the Poser, the Magna Charta and the Alice are all located generally upon the same vein, the location of which would indicate the same general formation. There may be different veins. It is generally known in the camp as the Rainbow Lode. The only workings of the Alice property were on the Rainbow Lode, and I think the important workings of these other mines are in that general strike. The lode pursues one course of a crescent, generally east and west. The Rainbow Lode runs through that country generally

pretty well defined, and it is a large lode, but of course, it is comparatively a small part of the surface of the country. In the Badger State claims there is a strong surface showing. That vein runs generally north and west. I don't know how it strikes the Moose. Of course, I don't want to appear to be testifying as having engineering or geological knowledge. I am only the business manager of the company. As to the consideration that induced me to put this Alice stock in with the Red Metal stock to the Butte Coalition—I never had any great faith in the Alice property. I thought it was a good purchase at that price, around six hundred thousand dollars in that territory. I did not want to buy it for myself. As a matter of fact, I did not want to buy it for our company, but for a company like the Butte Coalition that was going in and acquiring a more or less limited territory in the Butte camp with a good deal of money in its treasury, I thought it was a good gamble, I thought it was a good opportunity for them to acquire this property and spend some money on it in developing it. We could not tell when the Butte Coalition was organized just what our expenses were going to be, but I remember figuring it roughly I paid one dollar and a half for the Alice stock and I had some commissions to pay to people who helped me do the work, and who had taken some risks in connection with it, and I figured we would charge the Butte Coalition Company one dollar and sixty-five cents, or ten per cent upon the option price of this stock. Now,

there were 230,000 shares at \$1.65 a share, that amounted to \$379,000 or \$380,000. That left say \$120,000 to cover all of the expenses for all of the negotiations and all of the organizations of the Red Metal Company, the Butte Coalition Company, everything in connection with it, and to just give you as clearly as I can what our idea was in putting these things together, we made up our minds that we would not make one dollar profit or allow anybody to make one dollar profit outside of what profit there might have been on that fifteen cents a share on the Alice stock to some of the others, not to me. I did not take a cent. When we had all of our expenses paid that we could figure on and get in, we had something like \$16,000 or \$17,000 left over out of that \$500,000, and that money of course did not belong to anybody. As a matter of fact it was just that much profit on doing \$11,000,000 of business and I directed that that money be put in a fund and carried in an account to defray any unforeseen expenses that might come up in the future. It went along for four or five years and very little came up, and the balance of it, whatever it amounted to, was turned over to the Butte Coalition Company. The Alice stock was purchased by Mr. Thornton and was paid for before any of that money came in, in anticipation, however, of it being taken up through the Butte Coalition moneys. There had been no operations on the Alice properties, excepting leases since 1893. After the Butte Coalition Company acquired control of

the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct company operation, except taken care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs, we could not see where we were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations. As to the essential difference between zinc ores in the Alice properties and the zinc ores in adjacent properties on the same lode—the zinc ores east of the Alice properties are cleaner ores. They run very high in zinc, contain comparatively no iron. The zinc ores in the Alice produce anywhere from thirteen or fourteen to twenty per cent of iron. That is the thing in the ore that makes it impossible to concentrate to a

degree that will render it profitable. During that time I did not procure any reports from any engineers with respect to the possibility of the successful operation of the Alice property. They could not see anything in the Alice property because there is eight hundred feet of water in it. As far as any report on the surface indications and that kind of thing went, I had those reports from our engineers when they tried to discourage me from paying one dollar and a half a share for the stock.

Q. Hadn't Senator Clark's Elm Orlu on the same lode been operating with surprising success in the meantime?

A. We always knew that the zinc ore in the Elm Orlu was a zinc ore that would make a clean concentrate, and we knew that the ore in the Alice would not.

I don't think the Poser mine or the Pilot Butte had made any development that would give it any value up to the time that the Alice property was sold to the Anaconda Company. The Badger State was developing and had commenced production about that time, but it was not a large producing mine. There is not anything in the way of very promising developments going on in the Butte camp that our engineers are not very well informed about. The consideration that eventually induced me to have these properties acquired by the Anaconda Company was the opportunity to sell for something that had a market value then of a million dollars and a half for property that I had bought a few years before on a gamble, on the

basis of six hundred thousand dollars. I thought it was a very good trade and a very good profit. That was from the standpoint of whoever owned the property—from the standpoint of any Alice shareholder. I thought it was a very good round price for his holdings. From the standpoint of an Alice stockholder, I thought having bought this stock on the basis of six hundred thousand dollars it would be a good thing to sell it to an Alice stockholder at a price of two and one-half times that. I thought it was a very good trade. I was at that time a stockholder of the Butte Coalition and was until it was dissolved. At the time the sale was made, I was a director and vice-president. At the same time I was a director of the Anaconda Copper Mining Company and the president of the Alice Company and a member of the Board of Directors of both. Now, speaking from the standpoint of a stockholder and director of the Anaconda Company, I thought the Anaconda Copper Company could make very much better use of the property than the Alice Company. The Alice Company was without means, was in debt, had nothing in its plan of organization that permitted raising the money except to mortgage the property and attempt to sell bonds, and I had never considered that we had anything upon which we could base representations of the value of the property that would warrant anybody in loaning us a large amount of money. On the other hand the Anaconda Company was a large operating company,

with a large cash surplus, with an organization capable of carrying on the work at the lowest possible cost, with everything in the way of transportation, smelting and everything in operation, and it could afford to spend the money necessary to develop the Alice Company, when the Alice Company itself would not be able to raise the money and could not fairly and justly ask anybody to loan the amount of money required to do all that amount of work. The price was fixed by general conference,—in the matter of the Alice Company the price was fixed more or less arbitrarily. There was nothing in the value of the mines, there was nothing demonstrated that anybody could fix any value on. It was matter of trade between the representatives of both companies. Of course, when I closed out with Mr. Heinze I was on one side doing the best I could for the Amalgamated and Mr. Heinze was doing the best he could for his company. When we traded with Clark, Mr. Clark was looking after the interests of his company and I was looking after the interest of the Anaconda and the Amalgamated Company. The Alice Company appointed a committee to confer with a committee representing the other companies. I think the Board of Directors appointed the committee and I was president of the Board at the time. I don't remember who the members of the committee were. My associates upon the Board representing the Alice negotiations were Mr. Carson and Mr. Thornton. They were the two that I relied on more than anybody else in the Alice Company.

They were not connected with the Anaconda or with any of the other Amalgamated companies, but they were directors of the Alice, both men of very good knowledge of the Butte Camp and its history, and as a good a knowledge as anybody had of the Alice Company. Mr. Carson was manager of the Lexington mills, the adjoining property to the Alice, for years when it was in operation, and just before it closed, and probably had as intimate knowledge of that important district and Lexington districts as anybody who was then living. I don't recall who represented the Anaconda Company. There were committees representing the different companies that were in negotiation for the purchase on the part of the Anaconda Company and for the sale on the part of the other companies. I don't know that Mr. Thornton, Mr. Carson and myself agreed readily upon the price, but I don't recall any dispute. In reality the price was arbitrarily fixed. It had to be. It could not be otherwise. The price was not fixed by me. Neither the price on that or any of the other properties. I was very careful to see it was not. I realized that just such a question as this would be asked. I don't know that I would have so little common sense as to order on the part of the Alice Company prior to the sale of the Anaconda an investigation to be made by anybody to ascertain the then value of the Alice property. The Alice had no value except as to its mine. The whole matter of the value of the Alice mine was discussed pro and con at the time I took that option

and as I say all the talent in our organization was criticising me for taking that option. Nothing had developed after that time up to the time of the transfers of these properties to the Anaconda Company in the Alice mine or on the Alice mine property that was worthy of investigation. We all knew the development of the adjacent property in a way, and enough to guide us in our judgment as to the effect of that value on the Alice Company. The committee that were looking after the Alice end of the trade certainly satisfied themselves what they thought was a reasonable value for the property and made investigations accordingly I have no doubt. All of the committees representing all the companies did that; that being a part of the arrangement. As to the other two members, Mr. Carson and Mr. Thornton, being associated with me in the North Butte, I was a shareholder in the North Butte. I never was an officer or director, or directed any of its affairs. Mr. Thornton, as far as I know, was never a director of the North Butte or an officer, but had stock holdings. I think Mr. Thornton acquired some stock when that company was organized, the same as I did. I was living in Butte at that time. I think we were both consulted in the organization in this way—the Amalgamated Company had an option on the properties that were afterwards turned into the North Butte Company. After very careful examinations by the engineers, it was decided not to exercise that option. I had great confidence in the North Butte property, and that

decision was in opposition to my judgment. I was very anxious to prevent Mr. Heinze getting any hold of the North Butte. I felt that if Mr. Heinze who was fighting us tooth and nail acquired control of as rich a property as the North Butte that he would prolong the fight indefinitely, and that it would be very expensive for us. For that reason, the Amalgamated Company having decided not to exercise the option, I asked Mr. Rogers, the president, to allow me to interest some of my friends, to buy that property in order that it would not fall into Mr. Heinze's or any other hostile hands. He fell in with the suggestion and I told him that I was so sure of the value of the property that I wanted his permission to put any money that I could beg or borrow into the stock of the company and I wanted to be sure that I did it in such a way that no criticism could ever come on account of my taking part in the purchase of stock at that time. He told me that the decision of the Amalgamated Company had been reached against my judgment in the matter; that I was entirely free to invest in the stock of the company if I pleased, and so that there could never be any criticism in the future, he would take in his own name one hundred thousand dollars worth of the stock of that company and I could point to the issue of that stock to him in his own name forever, as being proof that I took what stock I got in my name with his knowledge and the knowledge of the Amalgamated Company and everybody concerned. Mr. Rodgers went in originally as a sub-

scriber for one hundred thousand dollars. He was at that time president of the Amalgamated Company. The Anaconda purchase of this property at that particular time, and when it had not taken the property at any time during the five years theretofore because it was purchasing the properties of all the subsidiary company of the Amalgamated and we were negotiating at that time for the Clark properties and because we thought that it was advisable for the Anaconda Company to extend its holdings and extend its property in the Butte camp to prolong the life of the company as far as possible. The Alice property was bought at that time simply because this other consolidation plan was going through and the Alice Company was without means to develop its own property and I was anxious to have the Anaconda take it over and enter upon its development. Clark turned over his property to us the first of June, 1910, the purchase was made a few months before that. The Alice purchase was made as of the 30th of April, 1910, the understanding was reached in that case as in the case of the others some few months before that time. The procedure in the case of the acquisition of the Alice property was substantially the same as that in the case of the purchase of the subsidiary companies of the Amalgamated, each of them was purchased by the issuance of stock in the Anaconda, and I think that the procedure was identical in each case; that is to say, a

meeting of the stockholders was held in each case to which was submitted the proposition of the Anaconda to issue a certain amount of its stock that was accepted then by the stockholders meeting and the board of directors authorized to complete the transfer, and the transfer was accordingly made and the stock issued. The Amalgamated Company bought the Clark property for cash and turned the properties over to the Anaconda Company for one hundred twelve thousand five hundred shares of Anaconda stock. I think Mr. Allen was secretary of the Alice at that time. Mr. Allen had his office in this building, in the same rooms as the Butte Coalition Mining Company had its office and adjacent to the offices of the Amalgamated and the Anaconda and on the same floor. In fact, the floor of this building is devoted to the use of the companies of which we have been speaking. Anyway Mr. Allen was here close by and convenient. He was in the office of the Butte Coalition Company. The procedure to be observed in Montana and Utah with reference to the Alice Company was directed by the board of directors of the Alice under advice of their counsel. I think the lawyers told the board what was to be done and the board instructed the secretary. On the part of the Anaconda Company, of course, some proceedings were necessary and the representative of the Anaconda and Montana got directions from the board of directors. I presume Mr. Thayer, the president, transmitted the directions. Mr. Allen, the secretary, un-

doubtedly sent the circulars to the shareholders and called the meetings and did the routine work, but the board of directors took action to have the work done. The Butte Coalition was a majority stockholder at that time. I cannot recall what the conferences were at that time as far as the Butte Coalition and the Alice were concerned. I don't remember who voted the stock of the Butte Coalition at the meetings. We did send some experts out here from New York to examine these various properties, which were required by the Anaconda Copper Mining Company, particularly the properties which were in operation, the mines that were in operation. Those experts were Mr. Herman Keller, Frank Klepetko, and Professor Kemp of Columbia University, and they made a report. I think it embraced the Alice. It would have to because as I say the amount of stock that the Alice got had an effect on the value of the stock the other companies got, and I am only supposing from that that they must have included the Alice. I don't know where that report would be. The result of that report was stated I remember in the circulars to the shareholders of all the companies. Of course, Professor Kemp would not get out there without making a report, but he might have made a verbal report, I don't know. The companies interested were the Amalgamated, the Anaconda, the Alice and the Butte Coalition, also the Parrot. The Anaconda itself had forty-nine per cent of its stock that was not owned or controlled by the Amalgamated. There was some Boston

and Montana stock outstanding and I think nearly all of the companies had some minority holding. If I should find such a report I will give it to you, and if I don't produce it then you may assume that there is no such written report, or if there is, that I don't know anything about it.

All of this stock of the United Metals Selling Company is now owned by the Amalgamated Copper Company having been acquired about April, 1911. It never owned any of that stock before. Mr. Rodgers, the president of the Amalgamated, during his life time owned stock in the United Metals Selling Company, as did some of the other directors, but I know of no other officers. Speaking generally, not of my own knowledge, the United Metals-Selling Company was formed to take over the business of Lewisohn Bros., who were metal merchants, and who sold the copper from a number of Lake Superior mines, some mines in the southwest, the Boston and Montana and the Butte and Boston and who at the same time did a general selling business. At the time the United Metals Selling Company was formed, the sale of the Anaconda Copper Mining Company was also given to it, but Lewisohn Bros. business was transferred to the United Metals Selling Company after it was organized. Anyway since the time of the organization of the Amalgamated Company, the United Metals Selling Company was the selling agency for the subsidiary companies of the Amalgamated and for a large number of other companies. During all that time it has

been the greatest copper selling agency in the world, handling about one-fourth of the American output now, or one-third, and has handled that proportion or more during all the period of its existence. This company sells under contract with the mining companies their output of metals. It has its agencies here in New York, and in various countries in Europe. It sells the metal and guarantees the payment of the accounts and transacts all the business of selling and charges its commission. The sale is actually from the producer to the purchaser. Lewisohn Bros. were selling for the Boston and Montana and Butte and Boston prior to the organization of the Amalgamated. Other companies operating in Butte at that time disposed of their product in substantially the same way. Shipments were made from Butte to the refiners and shipments were made from the refiners to the customers wherever located. Pig copper or blister copper the product of the converters is sent to the refinery and there it is electrolytically refined and silver and gold separated from it, and the electrolytic copper put into shapes, such as are used by the consumers of copper and shipped in that form. The sale was never made to the refiners by the large companies. The refiners do buy copper and refine it, but the refining for the large companies was all done on toll, the title to the copper, the ownership of the copper might change at times to this extent, whenever the mining companies are in need of money to finance their operation, the selling company

under its contract allows the mining company advances up to eighty or eighty-five per cent of the market value of the product in its hands. This is really not a sale but simply an advance on the consignment, but the selling company naturally has the right to pledge the copper of the companies on its loans in order to carry out that financing, but that is the general plan, mining companies get advances when they need them from the selling companies.

I produced the statement which you requested—complainants' exhibit "A" October 7, 1913, showing the production of copper, silver and gold of the Badger State mine since the commencement of operations on that property to June 30, of this year. At the present time the lowest level in the Badger State mine is approximately two thousand feet in depth. The extraction of ore in commercial quantities began, I think, at about twelve hundred feet. That vein is probably a continuation of the Jessie vein. I think there was a lean zone in the North Butte property at about that depth, but the Jessie was worked and produced ore practically from the surface, not in the same high grade bodies that were encountered from about nine hundred down. I think the two thousand and twenty-two hundred feet levels in the North Butte—by common repute,—I have never seen them myself are not as good levels as above and below. I can tell you from my mine report that I have here the distances east and west of the working shaft of the Badger State that the devel-

opments have extended. On the two thousand foot levels the workings extend easterly seventy-four feet and westerly sixty-nine feet from the cross-cut. I cannot find any report of Professor Kemp and Mr. Keller and M., Klepetko bearing particularly on the Alice property. I am quite sure that they did not make a written report particularly on that property, because they were employed by the different companies in the Anacanda consolidation to value plants, to inspect workings, and to generally pass upon the value of operating properties, which of course was impossible in the case of the Alice, as there was no plant and the workings were not accessible on account of the mine being filled up with water, up to about the 700 foot level. So far as the Alice Company is concerned, there was no written report from any engineer on the property preparatory to or anticipatory of the sale. Mr. Thornton and Mr. Carson both of whom are engineers with considerable experience in the valuation of mining properties, particularly in Butte, were directors of the Alice Company, and conferred with me as president of the company and very largely determined the value of the property for the purposes of the trade. Professor Kemp did not make any report to the Alice Company. Of that I am certain. The circular to the stockholders issued by the Directors was all the information the Directors or anybody else had, and was sent to the stockholders previous to the meeting at which they were asked to vote on the acceptance or rejection

of the offer of the Anaconda Company to buy the Alice property. I did not have specific information concerning the property from Mr. Buzzo, but I had general information. Mr. Buzzo did not talk enthusiastically about the property as I remember it, but he was very anxious to have the Alice property fall into the hands of someone who had money enough or could find money enough to open it up and develop it in the hope that something could be developed to make it a valuable property. So far as I was able to judge, he gave me whatever information he had concerning the property.

Q. I show you a circular letter issued to the stockholders of the company, marked Exhibit B, and ask you if that is the circular letter to which you have referred? (Handing witness circular letter).

A. It is.

MR. WALSH: This is offered in evidence.

(Circular letter referred to marked Complainants' Exhibit B, October 7th, 1913.)

I think this letter which bears date April 27th, 1910, signed by myself as one of the Board of Directors, was prepared by the Board of Directors. I think we all helped in its preparation. Anyway it had my approval I think. I would not sign it, unless it had. I think Mr. Allen was the secretary of the company. I was not associated in the organization of the North Butte. Mr. W. D. Thornton was a director of the Red Metal Company; otherwise not associated with me. The option

that I directed to be taken in his name on the Alice property was not for the Butte Coalition. It was for me personally. It is the same Mr. Thornton in whose name I took the option on the Alice stock. My relations with him were very close at that time, and continued so since. We have been associated in a number of enterprises. Apparently associate directors of the Alice, associate directors of the Butte Coalition. I think Mr. Thornton was a director of the Butte Coalition and I as well. He was not one of the directors of the North Butte to my knowledge; I think not. Mr. Thornton had his office here in the same building. He is president of the Greene Consolidated Copper Company. I am not a director of that company and never have been. I will make an exception to that. I think I was, in fact, I know I was for a short time in 1906. That is likewise one of the properties generally known as the Cole-Ryan properties. The Green Consolidated Company was organized and doing business for years before we had any connection with it. The Greene Cananea Company acquired control, and that company was organized by Mr. Cole and myself and our associate. Mr. Ferry is an attorney, I think, in Salt Lake City. I don't know whether he was a formal director. I don't know that he stood in the same relation to me as Mr. Evans did at Butte. I don't know what kind of a director he was, other than he was a director of the company. I don't know whether the stock which stood in his name to qualify him as a director was owned by him individually or

whether it was stock that was actually owned by the Butte Coalition or by myself or somebody associated with me. As Mr. Ferry was a director of the company and lived in Salt Lake City, where the meetings had to be held, I think probably that was the reason the secreatry sent the proxies to him. I don't know of any reason for uniting his name with that of Mr. Evans.

Q. I find his name joined with that of Mr. Thornton and Mr. C. F. Kelly, instead of Mr. Evans, by the proxy.

MR. WALSH: Mark this paper.

(Paper referred to marked Complainants' Exhibit C, October 7th, 1913.)

I cannot tell who directed the preparation of the proxy which has been marked Exhibit C. I don't know who had charge of the preparation of it, probably the secretary of the company. I don't know whether Mr. Thornton owned in his own right any shares of the Alice Mining Company at that time. I rather think he was there as the representative of the Butte Coalition, but I don't know. I don't know where Mr. Kelley owned any stock of the Alice Mining Company in his own right and I don't know whether he was there. He is the attorney for the Anaconda Copper Mining Company, and was at that time. I had no information at that time that zinc ores that had any commercial value were found in the property. I knew that there were large bodies of rebellious zinc ores in the Alice property which had been extracted to a considerable extent and

treated in the mill built by the Montana Zinc Company and treated unsuccessfully and unprofitably. That was immediately prior, for the two years prior to that time. Mr. Buzzo talked with me about the zinc ores. I don't know that he had some hopes of being able to find some process by which they could be reduced. I don't know that I would have considered Mr. Buzzo's hopes as adding any value to the property. He was a mining operator; not a metallurgist. I do not know what year Senator Clark first began shipping the zinc ores from the Elm Orlu. I don't know even approximately. I have not been in Butte much during that time. I don't know that it was intervening the time that I took this option and the time that the sale was made to the Anaconda.

MR. WALSH: There are some letters I would like to examine you about. I have sent for them, and I will have to suspend until they come. If you care to examine, Mr. Garver, you can go on, and we will take this up again.

Cross Examination by Mr. Garver:

I have refreshed my recollection as to the dates I became a director and an officer of certain of the companies. I have looked up the minutes of the companies and find that I was elected a director of the Amalgamated Copper Company on June 1st, 1908, and president of the company on June 10, 1909. Previous to that time I was a director of each of the subsidiary companies, of the Amalgamated Copper Company, but not of the Amal-

gamated Company itself. I was elected director of the Anaconda Copper Mining Company on the 28th of June, 1904, and president of that company on the 9th of June, 1905. I resigned the presidency of the Anaconda Company at the time of my election as president of the Amalgamated. I entirely forgot the controversy over the Ticon property, which I presume is the one that Senator Walsh had in mind when he questioned me. There has been a controversy between the Anaconda Company and Murray over the rights to ore bodies in the neighborhood of the Ticon claim that is owned by Mr. Murray and some of his associates. And that controversy has gotten into the courts in some form or other. I don't know whether the Anaconda Company has brought suit, or whether Murray has, but there has been some court proceedings over the rights to mine those ore bodies. That adjustment or those adjustments were made with the view of preventing controversies in the future more particularly. The companies controlled by the Amalgamated and the Heinze companies were involved in an endless mass of litigation, and when the litigation was dismissed all past claims were wiped out by the dismissal of the litigation, and shortly after that the adjustment was taken up by Boards of Engineers representing the several different companies, and so the adjustments made by these Boards were practically to settle existing differences and future differences, and prevent future differences. They had nothing ^{practically} to do with differences in the

past, because that had been wiped out by the dismissal of the litigation. The litigation that had previously existed interfered very greatly with the operations of the properties. A number of the largest and richest ore bodies in the district were standing idle and could not be worked on account of court injunctions and other ore bodies were not developed as they should be developed for fear of making development favorable to the other side. Generally it tied up a lot of mining property that was worked constantly from that time until the present. That litigation was very expensive in involving extensive geological work to ascertain the ore conditions. There was a great deal of development work done to prove rights and titles that was unnecessary, and it was very expensive. When these various companies had owned these contiguous properties, the object was to prevent those technical questions from arising in the future. I think unquestionably that the adjustment that was made at that time was advantageous to all of the companies concerned. At all of the times referred to in my testimony Mr. Cole was president of the Oliver Iron Mining Company, which is the mining organization of the United States Steel Corporation. He was largely interested in copper mines in Arizona, was a man of large means, and a very large mining operator. At the time of the formation of the Butte Coalition Mining Company, Mr. Cole had never been affiliated in any way with the Amalgamated

Company or any of its subsidiary properties. I don't know of my own knowledge what Mr. Congdon's means were or are, but by general repute he is a very rich man. I have heard it stated by well-informed people who lived in his city that he was probably the richest man in the State of Minnesota after James J. Hill. He has not and never had in any way been affiliated with the Amalgamated or any of its subsidiary companies. I spoke of an option that a man by the name of Wisner had on the majority of this Alice stock prior to my obtaining the option. I think he had it about three years, all told. I believe there was one and perhaps two renewals of his option. He spent a large amount of money in installing machinery to try out a zinc process. I say he spent it, the Montana Zinc Company, which was the company he organized for that purpose, built a plant for the treatment of zinc ores in the old Alice mill, and operated it for some little time unsuccessfully, and made no commercial success of the effort. It was after that had been abandoned that I obtained an option at the same price. My option was secured through negotiations with Matthew H. Walker and Mr. Farnsworth of Salt Lake City and O. K. Lewis, and I think two other gentlemen came to Butte to negotiate with me. They were in active direction of the affairs of the Alice Company practically from the time of its organization until they gave an option on the control of the property to me in 1905. I think the group who sold me the stock under that option or gave

me the option, represented the control of the Alice Company practically from the day of its organization. I think they so stated to me at the time they signed the option, that they were at all times in active direction of its affairs, and more familiar with the operations of the company than anyone else, excepting the mine officials who were doing the actual work, and they were under the direction of these gentlemen who gave me that option, and it was while they had charge of the company that the mine was closed and allowed to fill with water. It was about the time that the mine was closed down, as I have been told that Mr. Buzzo was placed in charge of the property; I did not live in Butte at the time and I cannot testify of my own knowledge. I think he had charge of the mine before it had filled up with water to any extent. I think he had a very good general knowledge of the lower levels of the mine. He told me of these large bodies of low grade iron zinc ore, what are called rebellious zinc ores, carrying some silver and gold, and that is all the information I had in regard to any zinc ores. I have never heard of any zinc ore in the Alice property, either in large bodies or in small ones, that has been susceptible of treatment by any process that would make them commercial today. I never have heard of any ores that differed in character from those that Mr. Wissner attempted to treat. Since the time that the transfer of the property to the Anaconda Company has been made, two examinations of the mines and extensive sampling in both cases, have

been made by the New Jersey people representing the Empire Zinc Company, and the others representing Beer Sondheimer & Company, the latter company large operators of zinc properties, large producers of zinc in Europe. Both of these examinations were made at the request of these people who wanted to see if they could do anything with the Alice ores. They both reported unfavorably, and dropped all negotiations which were pending to give them a lease on the property. We tried to induce practical zinc people to take a lease on the property and to develop it by the use of some method of extraction that they might bring to bear, but we have never been able to. I think these efforts were made about two years ago. I have no information at all which leads me to think that there is any known or possible process in the future by which those refractory zinc ores could be worked profitably. I have nothing but a hope. I have no knowledge whatever that some process may be discovered in the future, and I do not believe that any known process exists that would treat those ores at a reasonable cost, and make them commercially available. I hope that in the future such a process will be found, but as far as we know now there is none. In my circular letter to the stockholders of the Alice Gold & Silver Mining Company marked Complainants' Exhibit B, this statement is made: "You are therefore advised that in the opinion of the management, it would be to the best interests of this Company and its shareholders to accept the proposi-

tion of the Anaconda Copper Mining Company." That was my opinion at the time that circular was sent out, and it is now and has been ever since, and I have never had reason to change it in the least. I have never had any information in regard to the property that would cause me to modify that in the least. Well, I should say the Badger State Mine is a thousand feet away from the Alice properties. The Badger State claim I should say would be about one thousand feet from the Alice properties, but the Badger State workings more than that, probably two thousand feet from the Alice properties. There was an entirely different character of ore there. The ores opened in the Badger State are not zinc ores; they are copper ores with some little zinc, but copper ores running high in silver. The Lexington properties adjoining the Alice properties on the south have been worked extensively by the LaFrance Company or one of Heinze's companies within the last four or five years. That lies between the Alice properties, and the copper-producing properties on the western end of the Camp. It is almost directly south of the Alice properties, southeast of some of them; southwest of others. It is practically contiguous to the Alice property. The Lexington properties have been worked to a depth of about fifteen hundred feet, about the same depth that the Alice properties were developed, and produced much the same class of ore, a little more copper than was ever found in the Alice properties, because it is nearer to the copper belt, and the ore

carries a little more copper. The Lexington property has produced as much profit as the Alice during the years it was operated, but after being closed down in the nineties, it was unwatered and operated by Heinze or one of his companies rather extensively in the last four or five years. They built a mill, a zinc extraction mill, on the property at a considerable cost, stated to be over three hundred thousand dollars, and it was an utter failure, as far as I have learned from general reports, at least the mill was closed, and the mine was closed, and allowed to fill with water, and was sold at a foreclosure sale for \$250,000, mill, mine, surface plant and everything else. I bought for the Anaconda Company from the people who bought it at foreclosure sale, the stock of the Atlantic Mines Company, which company was organized to take over the Lexington properties, and all of them, and that company on its organization had \$250,000 placed in its treasury, which remained intact up to the time I bought it, and in fact, still remains intact. I paid for about eighty per cent of the stock of that company on the basis of \$600,000 for the company; deducting the \$250,000 cash in the treasury of the company would show that it was sold on the basis of \$350,000 for the property. It was bought in at foreclosure for \$250,000 at public auction. The area of that property is about thirty-five acres. I think the Alice property is 125 or 130 acres, but the area of the Alice workings and the area of the Lexington workings are about the same. As to the general geological and mineralogical condi-

tions there in the Lexington as compared with the Alice, I should say they are more nearly alike than any other two properties in the Butte Camp that are idle. Inasmuch as it is nearer the copper producing territory and more likely to get sufficient copper in its ore to make a profit, I would say the advantages were in favor of the Lexington. As a matter of fact, in this general consolidation of the properties in 1910, the Anaconda Company acquired the Badger State, Moose and a number of Butte and Boston properties that were immediately adjacent to the Alice property. It was the intention of the management of the Anaconda Company at the time of that consolidation, one of the reasons for that consolidation was the better opportunity it gave to develop adjoining properties at comparatively low cost. This was true of the Alice property. It was filled with water. It could be unwatered very much more economically through the Anaconda property by the use of the diamond drills, and drop the water off to their main pumping stations and the veins in the Alice property could be reached at depth at a very much lower cost by extending crosscuts and drifts that could be extended from the Badger State, the Moose or other properties that might be working in that vicinity. As an officer and director of the Alice Company I considered for several years the possibility of development of that property. I never was able to give any reason why anybody should loan a sufficient amount of money to do a reasonable amount of development work on that

property, because we had nothing to offer as a reason for the spending of that money, but the hope that it might result in the development of ore bodies that would pay. We did not know of any. It was nothing but an absolutely pure speculative hope. I never felt that I wanted to recommend to anyone that he should loan us or any institution that it loan us any amount of money requisite to develop that property on such a speculative hope. If it turned out badly it might ruin any man's reputation for having recommended it. From the knowledge that I had, I would not have advised any of my friends to acquire any bonds that might have been issued by that company. But on the other hand I felt that the Anaconda Company, with the ownership and development of adjacent properties, with its large resources, was well justified in paying the sum that was represented by these thirty thousand shares of capital stock, in that speculative hope of finding something there at greater depths, because the Anaconda Company had the means and had the opportunity for cheaper development than anyone else, and could well afford to take the gamble that was involved. That matter came up only in connection with the general consolidation, because the Anaconda Company had no properties through which it could reach the Alice property until that consolidation was effected, and the Butte and Boston and Boston and Montana properties were acquired. If the Anaconda Company had not acquired the Boston and Montana and Butte and

Boston properties adjacent to the Alice properties, I would not have felt at all like recommending the payment of thirty thousand shares of its capital stock for the Alice properties. The Amalgamated Copper Company or any of its directors or officers or persons connected with it, or any director or officer or person connected with the Anaconda Company, including myself, absolutely did not have any information about the Alice properties which was not disclosed to the stockholders of the Alice Company at the time of this conveyance in 1910. All the knowledge anyone had of the Alice properties was that of general knowledge, general information that was common rumor, common gossip in the camp for twenty years as to what was in the Alice mine when it closed down. I obtained no information that was not generally known to everybody, and known to the stockholders, if they cared to even keep track of common rumors. At the time of this consolidation of the properties in 1910, the capital stock of the Anaconda Company was increased for the purpose of paying for the properties taken in by these other companies from one million, two hundred thousand shares to six million shares, and the properties of all those other companies, including the property of the Alice Company were acquired at that time, and the stock was issued at that time, and is now outstanding. It has been listed on the New York Stock Exchange. The Anaconda stock is quite active. There are transactions in it nearly every day, some days several thousand

shares. Since 1910 a great many thousand shares of that stock have been dealt in on the New York Stock Exchange, and the stockholders have been continually changing during that period, and that stock was listed on representations to the Committee of the Stock Exchange that these properties, including the Alice property had been acquired, and the amount of stock that had been issued in their acquisition, and undoubtedly the dealings in the Stock Exchange and the investments by the public generally in that stock have been on the basis of these properties that were acquired at that time including the Alice properties. This building at 42 Broadway is very large. There are twenty or twenty-one floors. A great many other mining corporations and partnerships and business enterprises are in this building.

Direct Examination Continued by Mr. Walsh:

I don't think I testified that the Amalgamated itself became a stockholder in the Butte Coalition. I don't remember, but the Amalgamated did own fifty thousand shares of Butte Coalition stock. The total number of shares was one million. To the best of my recollection Mr. Rogers and Mr. Rockefeller took some stock in the Butte Coalition Company, but as far as I can recall, I don't know any other directors of the Amalgamated who did, or any officers of the company who did, unless it might be Mr. Addicks. I think Mr. Addicks took some stock. I do not remember about how much was taken. I don't remember whether Mr. Melin did or not. I think probably he did. No, I am

quite sure Mr. Burrage did not. The Mr. Rockefeller I refer to is William Rockefeller. I am quite sure that Mr. John D. Rockefeller did not become a stockholder, and I never had any business with him; I am quite sure that he was not a stockholder. Mr. W. M. Rockefeller I think must be William Rockefeller; it is the abbreviation for William. Percy Rockefeller is William Rockefeller's son. To my knowledge he did not become a stockholder in the Butte Coalition. I don't know Mr. Olcott. I don't think Mr. Stillman was a stockholder. I never knew of his being a stockholder. I don't know that Mr. Fowler was a stockholder. I don't think Mr. Church was. A number of officials, mine and smelter officials in Montana became stockholders in the Butte Coalition, but as far as the Executive officers or the directors of the company—I at that time was not a director of the Amalgamated—I can only recall Mr. Rogers and Mr. Rockefeller and Mr. Addicks; possibly Mr. Melin. I think Mr. Rogers was the director of the United States Steel at that time. I do not think Mr. Rockefeller was ever a director of the United States Steel, I have no knowledge of that. That is only my impression. I think Mr. Congdon was a lawyer, but he is not in active practice, as I understand it. I think his principal business is mining and leasing iron ore lands, I think that has been his principal business for years. He and Mr. Cole were rather closely associated up there at Duluth. At the time this circular letter of April 27th, sent to the Alice stock-

holders, it was not free from debt at the time that I took this option on the property. The Alice Company owed about \$25,000, and I remember distinctly that at the time I took the option I made a condition that up to the time that the option would expire the debt of the company should not be increased to over \$30,000. When I took the option the debt was about \$25,000, owing to Walker Brothers of Salt Lake City on notes of the Company and an overdraft in their bank. I don't know that there was any office maintained in Butte. Mr. Buzzo and after Mr. Buzzo died, his son, who succeeded him, looked after the leases. He had a mine office in an old building on the property there. The only duty that Mr. Buzzo had was to look after the property and to collect the royalty from the lessors. I don't recall the year the mill burned down. I think it was during the year after the option under which I acquired stock was exercised. Mr. Buzzo's salary and the salary of a watchman, I think, would be the only expense. There was some expense entailed in connection with keeping the shaft open, keeping the hoist working to hoist ore that the lessors were producing from the upper levels. I think that was taken care of by the royalties. Undoubtedly, the lessors pay for the hoisting, but the shaft had to be kept in shape, and I don't know what that expense was. There would be some expense, not anything very great. The expense of the office here in New York was practically nothing, about \$1900, it would not be anything

large. Well, I imagine it would take a good part of that just to look after the routine reports and statements from the company and send out the notices to the stockholders of meetings and carry on the corporate business. I do not know what the relationship of Mr. M. H. Walker and Joseph R. Walker is. They are related, I am quite sure, but I don't know the different members of the Walker family and what their relationship is. I thought Mat Walker was an uncle of J. R. Walker, but I am not sure. I made the contract or option with Mr. Mat Walker practically. He had three, perhaps four other gentlemen with him who came to Butte on that business. They were all representing large interests in the stock. I cannot find that option now. I have been looking for it since, and I cannot find it. I don't know when the Alice Company ceased operations; somewhere in the nineties. They operated very little as I understand it, as I have been told, very little after 1894. They did a little work in 1896, 1897 or 1898 but nothing of any account. Thereafter Mr. Buzzo was in charge for the Alice Company. I don't know that he was a mining engineer; he was a mining man of wide experience, a mining manager of wide experience. One examination of the property was made by the engineers representing the Empire Zinc Company, which is, as I understand it, a subsidiary of the New Jersey Zinc Company, one of the largest producers and marketers of zinc in this country. The other was representatives of Beer, Sondheimier & Company,

which is a firm,—a German concern—with offices in New York. This examination was made by them within the last three years, some time subsequent to the transfer of the Alice properties to the Anaconda Company. They were looking for zinc properties and had heard that the Alice contained a large body of zinc ore, and they wanted to sample it and investigate it, and see whether they thought they could make it commercially available. They were anxious to produce the zinc. We offered in both cases to give a lease of the ore bodies to whoever would take it and develop a process that would work the ore. We were anxious to develop the mine, and get some process that would make the ore available commercially. I talked with some of the New Jersey zinc people here before they sent their representatives out to make the examination, and also with the men in charge of Beer, Sondheimer & Company's business here. The representatives reported to Mr. Gillie in the West, and the examination was made by them. The examination was made for themselves. They made no report whatever to us, excepting to say that the ores were not such as they could successfully treat, and they were not interested in any further negotiations for a lease on the property. I do not think I had any correspondence with them in relation to leasing the property. It may be that Mr. Gillie had some correspondence after the engineers left the West, but my interviews with them were all verbal. As expressed in the letter of April 27th, it was my view that

the sale was in the interest of the stockholders of the Alice Gold and Silver Mining Company, and that is correct, and it is also correct that at the same time I thought the purchase was in the interest of the Anaconda stockholders. I think the sinking of the shaft on the Badger State was begun sometime in 1906 or 1907 I don't remember distinctly. That is about the time. It has been sunk continuously since the beginning of the operations. We have never stopped for more than a few months to get the work squared away; the sinking has been pursued with diligence ever since that time. We were anxious to get as great depth as possible. We went down to the 2,000 where we are now. There has been no interruption of sinking operations. That is the ordinary hoist for a producing mine of that size in the camp. It is one of the second class. It is not as large a hoist as there is on a number of other mines in Butte. There is a larger one on the Leonard, the Mountain View, I think, High Ore, Diamond. I may not be exact in that. There is a new hoist placed on the Badger State within the last few months. I think it is just about in operation now. It was not in operation when I was in Butte in September. The one we began operating with hoisting ore in 1910 was a small hoist, taken off of one of the other properties, because it would not hoist from the depth that the other property had attained. It was a small hoist moved over to the Badger State. There has never been a complete modern hoist on the Badger State until within the

last few months. The hoist in operation up to that time was one that had been in use for years on some other property and moved over there, because it had not sufficient capacity on the property it was taken off of. The Lexington was one of the Heinze properties at the time that I made the purchase; however, that was not taken over at that time. I talked to Mr. Heinze about it, and he was unable to sell the Lexington property because it was under a mortgage securing the LaFrance bonds and he could not dispose of the Lexington property at any reasonable price, because he would have had to pay into the trustee of the mortgage more than he could have realized for the Lexington properties. We would have been willing to have acquired it at that time at some price, but it was found impracticable to be done. I did not arrive at the amount of Anaconda stock to which the subsidiary companies should be entitled. The negotiations were carried on by the committee representing the different companies. These committees reached a basis of valuation in Anaconda stock for the different properties. The Boston and Montana received one million, two hundred thousand shares of the Anaconda stock. That valuation was arrived at by the committee that was appointed representing the Boston and Montana, and the committee that was appointed, representing the Anaconda, working in connection with the committees representing all of the other companies; for the reason that if the Boston and Montana received one million, two hundred

thousand, and let us say that that was in excess of the amount which it was fairly entitled to, the Washoe shareholder would insist upon the amount being put at such figure that he was getting his fair share of the total property in Anaconda stock. Naturally in arriving at that, some valuation was put upon the various properties entering into the transaction. That was what would determine the amount of stock that each company would get for its property, the valuation of the property. I don't know at what valuation the Badger State or the Moose went into that. I don't think there is any record of that, and I don't think any definite particular valuation was put on each mining claim. To the best of my recollection, these committees conferred with one another, took production and record and all those things, but did not value each separate mining claim. With reference to the occupancy of this building by our companies, we are now on the 20th floor of this building. The Amalgamated Company has a large part of the floor, the President's office of the Anaconda Company is on this floor; the International Smelting and Refining Company, the Green Cananea Copper Company, the Hedly Gold Mining Company, are all on the 20th floor that I can remember. The Hedly Gold Mining Company operating a mine in British Columbia. I hold some stock in it. At the time that it was dissolved, the office of the Butte Coalition was on this same floor; also the Alice Gold Mining Company.

MR. WALSH: We will have to wait for some original letters and exhibits, and ask to examine Mr. Ryan further when he comes.

Cross Examination.

Walker Bros., from whom he obtained this option, were the active men in the Alice Company and bankers as well. The Alice Company owed about \$25,000 to Walkers Bros. That was paid off by the Butte Coalition Company at the time it made the purchase of the control of the stock. Beer, Sondheimer & Company are a very large German metal concern,—I think one of the largest in the world, and the New Jersey Zinc Company, I think, is the largest zinc company in this country.

Redirect Examination.

I am quite sure that I would recognize Mr. Buzzo's signature, if I saw it. The letter dated January 16, 1901, marked Complainants' Exhibit V bears the signature of Mr. Buzzo.

MR. WALSH: We offer that in evidence.

MR. GARVER: That is objected to as irrelevant, incompetent and immaterial, and on no possible ground can it be binding as against these defendants.

MR. WALSH: We will offer these and insist upon their admissibility on two grounds: First, as the admissions of the agent of the predecessor in interest of the defendant made in the course of the discharge of his duties; second, as the declarations of one in possession of real estate in relation to the property.

I am quite sure that the signature to complainants' Exhibit W is in the handwriting of Mr. Buzzo.

MR. WALSH: I offer that also. Complainants' Exhibit X likewise bears the signature of Mr. Buzzo.

MR. WALSH: We offer that in evidence. Exhibit Y is in the handwriting of Mr. Buzzo.

MR. WALSH: We offer that in evidence.

MR. GARVER: These are all objected to.

Exhibit Z, I think is in Mr. Buzzo's handwriting and signature.

MR. WALSH: We offer this in evidence.

MR. GARVER: Same objection.

Each of the foregoing exhibits, marked Complainants' exhibit V, W, X and Y respectively, were separately objected to by the defendants for the reason that they, and each of them, were incompetent, irrelevant, immaterial and hearsay, and that they, and each of them, were simply representations or declarations from Mr. Buzzo, an employee of the Alice Company, to an officer of the Company not in any way connected with the Anaconda or any of the other defendants in this action, and not in any way binding upon the Anaconda Company, or any of the other defendants in this action; and that neither they or any of them contain a declaration against the interests of the Alice Gold & Silver Mining Company, and that neither they or either of them contain declarations against the interest of either Mr. Buzzo or the Alice Gold & Silver Mining Company, and that neither they or either of them contain a declara-

tion against the title or possession, or any such declaration against the property, which would be admitted under the rule as to competency, of declarations of predecessors or ancestors in title.

Whereupon, as to each of said objections, the court ruled as follows: "I doubt if they are competent for any other reason. They are reports from an agent, a superintendent, to his superior, self-serving, and they are being endeavored to be used here for the benefit of the company. I will follow the usual rule, however: for the present, I will overrule the objection *pro forma*. If we find before the case terminates here that they should not be admitted, it will save the necessity of your putting in the proof which might otherwise be necessary."

To which ruling of the court, the defendants, and each of them, then and there excepted.

Q. Mr. Ryan, I wanted to question you particularly about the statement in this letter of May 14th, 1901, in which Mr. Buzzo says: "The ore in the sample I sent Mr. Robinson was taken from the six hundred, five hundred, four hundred, and three hundred foot levels of the Alice, as the water is up to the 700 foot level I did not get any samples below the 600, nor did I get into where there is ore of a higher grade, say, running up to as high as fifteen ounces, and two dollars in gold, owing to the levels being caved down. However, I am satisfied from my knowledge of the property, that with the reopening of some of the levels, the great body of base ore in the north vein will aver-

age twelve ounces in silver, and two dollars in gold per ton, and from one-half to one per cent of copper, two to five per cent lead and eighteen per cent zinc per ton." And to the following "The assays I gave of the lower grade ore above would in my judgment apply to the following reserves of ore developing in the company's properties, namely, in the Alice North Lode above the one thousand level, seven hundred thousand tons, from the one thousand to the fifteen hundred foot level, three hundred and fifty thousand tons, from the Magna Charta south lodes above the seven hundred, three hundred thousand tons, from the Magnolia Lode, fifty thousands tons, in the Blue Wing Lode, fifty thousand tons, in the Rising Star, twenty-five thousand tons, in the Paymaster, twenty-five thousand tons; total, one million, five hundred thousand tons." And to inquire of you whether Mr. Buzzo, in the course of your conversation with him gave you substantially that information concerning the property? A. He said to me that there was a very large tonnage of ore about that grade, which was not commercial ore, and could not be treated commercially by any known process. The values, if that ore ever could be looked upon as having real value at all, was entirely in the silver. The lead is of a lower percentage than any smelter would pay for.

As to how the work is progressing, the Moose shaft is being sunk. I don't know to what depth we have gone. I think somewhere about four

hundred. We cleaned out the old shaft and re-timbered it, and I think enlarged the size, and then started sinking. I don't know whether that is sunk on the same vein as the Badger State. The shaft is not sunk on any vein; the shaft is a perpendicular shaft sunk, intending to intercept veins by cross-cuts. As I said, I don't want to testify to the veins in the section. I don't consider my knowledge is sufficient to enable me to. No, our engineers did not make any report preparatory to undertaking that work on the Moose with respect to the advisability of pursuing work. I talked with Mr. Thayer about it after one of his visits to Montana. That was the only report that I had. I don't think there was any report made. I think Mr. Thayer decided upon doing exploratory work through the Moose shaft by sinking it, and cross-cutting from it. That is, he went on the ground and conferred with the engineers, after conferring with the engineers of the company. To my knowledge, it is not correct that I brought action against the Pilot Butte. I did not know that any action had been brought against the Pilot Butte. I think the Pilot Butte is the owner of the Pilot claim. The Anaconda Company owns the Emily immediately to the south.

Recross Examination:

These letters signed by Mr. Buzzo which have been offered in evidence today were all written in 1901, were written to Mr. Walker from whom I obtained the option and who negotiated the terms of the option and the

subsequent sale of the stock to me. That option was the first or second of September, 1905. The option to Mr. Wizner was subsequent to 1901, and it expired just before the option to me was given. That was also an option which included the stock of M. H. Walker and his associates, making up the controlling interest in the company. I rather think Mr. Buzzo himself owned stock of that company. I would not be certain enough to testify to that. I have a faint recollection that Mr. Buzzo asked to include his stock in the option, but I am not positive as to that. I told Mr. Buzzo when he gave me practically these assays, gave me the average assays of the ores, as he had them, that there was not sufficient lead in the ores so that any smelter could make use of it or could extract it; that there was not any zinc process known, that would extract that percentage of zinc from that composition of an ore at any profit, and the only metal that would have any value, or rather that could be extracted at all, that would have any value, would be the silver, and twelve ounce ore at that time was worth something under six dollars a ton, which would not commence to pay for mining and smelting, and hence there could not be any possible profit in those reserves, as he called them at that time, and the only hope for profit would be the development of some process that was unknown at that time. Mr. Buzzo told me of all of these negotiations that they had with exploiters of zinc processes. He told me they raked and scraped every corner of the

world for a zinc process that would treat the Alice ores. He had absolute faith that such a process would be found some day, but admitted that at that time there was no such process, and the ores could not be treated commercially.

Re-Direct Examination:

This firm of Beer, Sondheimer & Company has an office in this building, 42 Broadway. I don't know what floor. I have never been in their office. I know they are in this building, because I have seen their representatives here from time to time. I am quite sure they are operators of zinc properties, because they have in connection with these Alice negotiations, they told us of zinc experiments in the treatment of zinc ores, and they wanted their engineers to have the opportunity of determining the composition of the Alice ores, to see whether these processes could be used on them. I don't know where their mines are. I remember their representative telling me some time ago of their having spent a very large sum of money, running into the hundreds of thousands of dollars, in Germany and Sweden, in an attempt to smelt zinc ores in electric furnaces. I think they do purchase zinc ores—I mean, they purchase zinc concentrates, I think, and smelt them. No, I do not think they have a smelter, but I think their principal business is the purchasing of concentrates, and the treatment. I do not know of any zinc mines in this country that they operate. The other day I spoke of the Empire Zinc Company. They are operating zinc mines in several

sections in Colorado that I know of. I don't know what other sections. As I understand it, the Empire Company is a subsidiary company of the New Jersey Zinc Company, which is probably the largest zinc concern in this country.

(Witness Excused.)

The exhibits hereinbefore referred to in the testimony of witness Ryan are as follows:

Complainants' Exhibit A.

ANACONDA COPPER MINING COMPANY

BADGER STATE MINE

PRODUCTION OF COPPER, SILVER AND GOLD

	Wet Weight (Tons)	Dry Weight (Tons)	Copper Lbs.
1910			
June 1st to December 31st	20,016	19,442	1,310,431
1911			
Year ending December 31st	129,306	126,459	6,079,005
1912			
Year ending December 31st	205,337	201,068	10,135,197
1913			
Six months ending June 30th	103,007	101,152	4,417,555
	<hr/>	<hr/>	<hr/>
Total.....	457,666	448,121	21,942,188
1910			

Silver ozs. Gold ozs.

June 1st to
Decem-

ber 31st ..	80,149	78-100ths	185	559-1000ths
1911				
Year ending				
Decem-				
ber 31st ..	411,367	10-100ths	816	924-1000ths
1912				
Year ending				
Decem-				
ber 31st ..	687,308	98-100ths	1,178	277-1000ths
1913				
Six months				
ending June				
30th	319,406	13-100ths	539	511-1000ths
Total.....	1,498,231	99-100ths	2,720	271-1000ths

Complainants' Exhibit B.

New York City, New York, April 27, 1910.
To the Stockholders of the Alice Gold & Silver
Mining Company:

You are advised that a special meeting of the stockholders of the Company has been called to meet at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, 1910, at the hour of 10 o'clock A. M.

The purpose of the meeting is to submit to the consideration of the stockholders, and to have them pass upon, a proposed contract of sale between the Company and the Anaconda Copper Mining Company of Montana. The proposition, if approved by the holders of the necessary amount of the capital stock of the Company, will result in the

sale and transfer of all of the property and assets of the Company to the Anaconda Copper Mining Company, in consideration of the issuance and payment by the latter Company of 30,000 shares of the full paid capital stock of said Company.

In submitting this proposition to the stockholders, and advising its acceptance, the management wishes to state that the Alice Gold & Silver Mining Company was incorporated under the laws of Utah on the 16th day of March, 1880, with a capital stock of \$10,000,000.00, divided into 400,000 shares, having a par value \$25.00 each all of which said stock was issued in acquiring certain mining properties near Walkerville, in the County of Silver Bow, State of Montana.

The mines of the Company were operated actively from 1880 until 1893, and afterwards for a short period during the years 1897 and 1898. The total dividends which were paid from March 15, 1881, to March 15, 1898, amounted to \$1,075,000.00.

During the period of active operation silver was the chief product of the Company. During the year 1893, because of the marked decline in the market price of silver and the lean values of the ores which were developed in the lower levels of the Company's mines, it became necessary to close down its property, and practically no operations have since been conducted by the Company and no revenues have been received except a comparatively small sum realized from the royalties paid by lessees working in certain portions of the older levels of the mines. As a result of closing down

the mines of the Company the same filled with water up to the 700 foot level, and the workings between that level and the 1500 level have been and now are inaccessible.

A balance Sheet showing the condition of the Company on March 31, 1910, and a Profit and Loss Account, showing the result of such operations as have been conducted by the present management, are attached hereto and marked respectively Exhibits A and B.

In 1906 the Butte Coalition Mining Company acquired by purchase from the former owners a majority of the stock of the Company.

The market price of silver, taken in connection with the low grade of the ores exposed, has been such that the mines of the Company could not be worked at a profit, and in view of the depleted condition of the treasury of the Company the management has not felt justified in endeavoring to carry out any extensive system of prospecting or development work.

Recently the stockholders of other companies, to-wit: the Boston and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company, Big Blackfoot Lumber Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company, Red Metal Mining Company, Diamond Coal & Coke Company, and Parrot Silver & Copper Company, have taken steps to effect a consolidation of all the property owned by them, by a sale of their respective properties to the Anaconda Copper Mining Company,

for certain amounts of the capital stock of the Anaconda Copper Mining Company, and the last named Company, in pursuance of the same general plan, has offered to purchase all of the property of this Company, paying therefor 30,000 shares of the capital stock of the Anaconda Copper Mining Company.

By the consolidation above referred to the Anaconda Copper Mining Company has acquired the most important mining ground in the Butte District, and it is believed that it will be enabled, through the adoption of general systems of drainage, ventilation and development, to prospect in an economical manner the undeveloped portion of the property thus acquired.

This Company is the owner of comparatively large areas of mining property which lie contiguous to some of the property belonging to the Anaconda Copper Mining Company, and which it is believed are of sufficient value to justify prospecting and development, provided the same can be carried on by a company strong enough financially to berden of so doing.

In addition to the cost which the resumption of active mining operations would entail, you are advised that it would be necessary to construct and equip new mills or reduction works of modern design and suitable character to handle the ores of the Company economically, provided such ores were encountered in sufficient quantity to justify the continuance of mining operations. Such action would require the expenditure of

large sums of money, at present unavailable.

You are therefore advised that in the opinion of the management it would be to the best interests of this Company and its shareholders to accept the proposition of the Anaconda Copper Mining Company.

You are therefore requested to sign the accompanying proxy and return it in the enclosed envelope whether you expect to be present at the meeting or not, in order that the stock owned by you may be represented and voted at the special meeting of the stockholders.

Very respectfully,

JOHN D. RYAN,

J. W. ALLEN,

W. D. THORNTON,

A. C. CARSON,

E. S. FERRY,

Board of Directors.

Exhibit A.

ALICE GOLD AND SILVER MINING COMPANY.

BALANCE SHEET, DECEMBER 31ST, 1909.

ASSETS.

FIXED:

Mines and Mining,
Claims, Buildings
and Machinery,
etc.:

Balance March 31st

1906 (equal to

Capital Stock per

contra)\$10,000,00.00

Anaconda Copper Mining Co. et al. 447

Less recovered from

Insurance Com-
panies for Fire
Loss in 1906 and
proceeds of Sale
of Old Machin-
ery and material..

18,056.90

9,981,943.10

DEFERRED:

Supplies on hand

\$113.37

Insurance unex-
pired

141.49

254.86

CURRENT:

Accounts receivable..

\$235.76

Cash in Bank

2,482.28

2,718.04

\$9,984,916.00

LIABILITIES.

CAPITAL STOCK:

Authorized and is-
sued-400,000 shares
of \$25 each—.....

\$10,000,000.00

CURRENT:

Butte Coalition Min-
ing Company

34,101.56

DEFICIT:

Balance March 31st,
1906

\$27,784.75

Add Loss for the
three years and

nine months ending		
December		
31st, 1909, per		
Profit and Loss		
account annexed	21,400.81	
	<hr/>	49,185.56
		<hr/>
		\$9,984,916.00

We have examined into the affairs of the Alice Gold and Silver Mining Company and have verified the Assets, Liabilities and Losses shown above.

We hereby certify that this Balance Sheet shows the financial condition of the Company at December 31st, 1909, and that the annexed Profit and Loss Account for the three years and nine months from April 1st, 1906, to December 31st, 1909, is correct.

New York and Butte, April 27th, 1910.

POGSON, PELOUBET & CO., Auditors.

Exhibit B.

**ALICE GOLD & SILVER MINING COMPANY.
PROFIT AND LOSS ACCOUNT FOR THE THREE
YEARS AND NINE MONTHS FROM APRIL
1ST, 1906, TO DECEMBER 31ST, 1909.**

Royalties	\$16,347.52
Miscellaneous Receipts ..	2,526.88
	<hr/>
	\$18,874.40

DEDUCT:

Western office expenses:

Salaries and Wages \$21,892.85

General Expenses and

Anaconda Copper Mining Co. et al. 449

Supplies	6,729.56	
Insurance	1,372.98	
Taxes	2,122.74	
Bad Debts	99.69	
	<hr/>	
	\$32,217.82	
Eastern Office Ex-		
penses	1,901.61	
Interest on borrowed		
money	6,155.78	
	<hr/>	
		40,275.21
		<hr/>
Loss for the three years and nine		
months ending December 31st,		
1909, carried to foregoing Bal-		
ance Sheet		\$21,400.81

Complainants' Exhibit C.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, hereby make, constitute and appoint W. D. THORNTON, E. S. FERRY and C. F. KELLEY, or any one of them, or such person or persons as they, or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place and stead of the undersigned, to vote upon the stock of the ALICE GOLD AND SILVER MINING COMPANY, a Utah corporation, according to the number of votes that the undersigned would be entitled to cast if then personally present, at a special meeting of the stockholders of the said company, to be held at its principal office in the Utah Savings & Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A.

D. 1910, at 10 o'clock A. M., and at all adjournments of said meeting, for the purposes for which said meeting has been called by resolution of the Board of Directors adopted on April 27th, A. D. 1910, namely:

First: For the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold and Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property of every kind and character owned or possessed by the Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold and Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company;

Second: For the transaction of any other business that may properly come before said meeting,

IN WITNESS WHEREOF, I hereunto set my hand and seal this — day of May, A. D. 1910.

Witness:

.....(L. S.)

Complainants' Exhibit V.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, Jan. 16th, 1901.

M. H. Walker, Esq.,

Anaconda Copper Mining Co. et al. 451
Vice Pres., Alice Gold & Silver Mining Co.,
Salt Lake City, Utah.

Dear Sir:—

I am in receipt of your favor of the 14th inst. You ask what are my ideas about sending a shipment of zinc ores to the Vulcan Smelting and Refining Co. of San Francisco for a test, I think the idea is a good one. We have a quantity of ore, in any desirable amount, to send to them for the purpose as soon as I hear from them in answer to my letter, written while I was in your city, to them. I am looking for their answer now any day. I send you by this mail their illustrated pamphlet, which came to this office while I was away. On reading it you will see that if they can do anything like what they claim, they can make an unqualified success in the smelting of our ores. I understand they do not claim to save the zinc, but the product would be a matte, consisting of iron, lead and copper, and the values in the ore of gold and silver. This product would be very saleable. In fact we could run the same over again and thereby raise its value, if we so desired. Another thing, this method of smelting would enable us to treat all our silicious ores for, say, not to exceed three dollars per ton, whereas we are now charged \$8.50 per ton by the Butte Sampling Works.

If this smelter can do what they claim, we can work all our ores, base and free, at a profit. And if a test on our base ore made by them is success-

ful, then we should with as little delay as possible negotiate for a furnace.

Our old mill of twenty stamps is admirably situated to be used for a smelter plant, as the cars run direct from the Alice shaft into it, and the big sixty stamp mill would not be disturbed.

In the foregoing we have not taken into account the saving of zinc in our ores, but this matter will soonest be brought about, probably, by the Sadtler Zinc Smelting Co., which in the spring intends to erect a zinc smelting works at Helena. They intend to start in on a small scale first, increasing afterwards according to the measure of success they obtain in treating the ores, so that probably before they could do us much good, it would be a year or eighteen months. All this is in case they are successful, but our condition is such that we want to take advantage of the first process or method that will put us upon a paying basis, and the quickest thing in sight on paper is the Vulcan smelting method, that is, supposing what they claim is true. Another thing, if the Vulcan method is all right and we were to adopt it, we would have something with which to stand the zinc people off if their charges were exorbitant. I am satisfied that no zinc works will be erected in this state of sufficient capacity to take what ore we could supply and what others would want to deliver to them, for several years at least. The tonnage of this base ore in the Alice is simply enormous, I have learned since I returned from your city from a reliable miner who worked on the 1300

and 1400 levels in the north vein, that the ore there was of the same size and character as it is from the 1000 up to the change from oxidized to the base ores, which is about at the 200 level.

We have our force repairing the station at the Magna Charta shaft on the 300 on both sides. The cave down was quite serious and if not attended to would have resulted seriously to the safety of the shaft. It will take all of this week to complete the job, but by about the middle of the week we can take two of the men and put them drifting with the machine drill in the Saukie vein on the 200.

The weather is fair for the winter, cool with casual snowstorms.

We are all well here, and hope the same is the case with yourself and family.

Yours truly,
(Signed) T. W. BUZZO,
Sup't.

Complainants' Exhibit W.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, May 14th, 1901.

J. R. Walker, Esq.,

Salt Lake City, Utah.

Dear Sir:—

Your favor of the tenth inst. was duly received and the matters therein carefully considered.

Regarding the assay of the contents of the sample of ore which I sent to Mr. T. G. Robinson of Room 610, No 10 Wall Street, New York, and which was made by C. Amory Stevens, it agrees

essentially with the results obtained by our assayer except as to silver and gold. Mr. Stevens makes the silver average 22 ounces and the gold \$1.00; our assayer obtained 8 ounces in silver and \$1.60 in gold. This checks up with our previous work by himself and other assayers. There must be some mistake in the results obtained by Mr. Stevens, as in all our base ores of this character, where the silver is as high as 22 ounces, the gold is invariably from \$3.50 to \$4.00. In any event, Mr. Stevens' gold is too low. It is barely possible that there might have been a little native silver in the sample, which carried up his figures, yet in the portion that we had assayed, taken from the same lot, only gave 8 ounces.

The ore in the sample I sent Mr. Robinson was taken from the 600, 500, 400 and 300 foot levels in the Alice. As the water is up to 700 foot level I didn't get any samples below the six hundred, nor did I get into where there is ore of a higher grade, say—running up to as high as 15 ounces and \$2.00 in gold, owing to the levels being caved down. However, I am satisfied from my knowledge of the property, that with the reopening of some of the levels the great body of base ore in the north vein will average 12 ounces in silver and \$2.00 in gold per ton, and from a half to one per cent copper, 2 to 5 per cent lead, and 18 per cent zinc per ton.

We have tributers working in this base ore on the different levels between the 200 and the 600, who are working in richer streaks than the great

mass of ore, which averages 15 feet in width. These streaks of richer ore average from 6 inches to 3 feet in width, and yield ore going from 15 to 60 ounces in silver and from \$2.50 to \$10.00 in gold per ton. This quality of ore finds a ready market in Butte.

The assays I give of the lower grade ore above would, in my judgment, apply to the following reserves of ore developed in the Company's properties, namely:

In the Alice North Lode above the 1000

level 700,000 tons;

From the 1000 to the 1500 foot level..... 350,000 " :

In the Magna Charta South Lodes,

Above the 700 300,000 " :

In the Magnolia Lode 50,000 " :

In the Blue Wing Lode..... 50,000 " :

In the Rising Star 25,000 " :

In the Paymaster 25,000 " :

Total..... 1,500,000 tons.

If desirable, I will send another sample to Mr. Robinson, taken from the mine, so that Mr. Stevens can check against the first sample.

As to the expense of mining the ore and delivering it to either of our mills; it can be done for \$1.50 to \$2.00 per ton, but in our estimates we always calculate at \$2.00 per ton so as to be on the safe side, and provide for the expense of keeping open the mine in good shape. Of course, the intrinsic value of the metals in the ore is ample, if they can be extracted economically, for great profits, and it

seems to be a question for the skillful metallurgist to cope with.

I hope that Mr. Stevens will be able to accomplish the results which he feels confident he can, in the extraction of the values in this ore, and at such a low cost, for it certainly would place at once the Alice on a paying basis that would last uninterruptedly for over twenty-five years, according to the ore now in sight and the prospects ahead.

Yours truly,

(Signed) T. W. BUZZO,

Sup't.

Complainants' Exhibit X.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, May 14, 1901.

J. R. Walker, Esq.,

Salt Lake City, Utah.

Dear Sir:—

Replying to your favor of the 10th, I thought it better to address you the letter inclosed, which you can have copied and sent to Mr. Robinson. I thought it best, perhaps, under the circumstances, for this letter to go to you instead of direct from me to Mr. Robinson.

You will observe that I have called attention in the letter to the evident mistake of Mr. Stevens' assay in the gold and silver obtained from the sample I sent to Mr. Robinson. His other assays average up about right, that is, on the zinc, lead and copper.

I hope Mr. Stevens can accomplish one half,

even, of what he thinks he can. I am afraid he is very much mistaken. But at the same time, I hope he is not; for if he is not, it means great wealth to the Alice Company.

By all means we must keep these people investigating, for I firmly believe some chemist will be found yet who will be able to solve the question, if not wholly, sufficiently so at least to lift us out of trouble. Would it not be well for me to send another sample to Mr. Robinson? Everything here is moving along as usual.

Yours truly,

(Signed) T. W. BUZZO.

Sup't.

Send the copy to Mr. Robinson and leave out anything you wish omitted.

Complainants' Exhibit Y.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, June 26, 1901.

M. H. Walker, Esq.,

Pres. Alice Mining Co.,

Salt Lake City, Utah.

Dear Sir:—

We have been having a great deal of rain and stormy weather. It has cleared up cold. In the past three days a good deal of snow has fallen on the mountains.

Since my return from Salt Lake, I have been very busy and I have so much to do, that it will be impossible for me to leave for Salt Lake to see Mr. Bemis before the 5th of July. Returns from eight cars of ore shipped nearly two months since to

the Everett Smelter at Wash. are just received, and also other returns from the Butte Sampling Works are at hand, all these I have to figure out to make settlements with the tributers, and besides our tributers are crowding their shipments to the Butte Sampling Works in order to get spending money for the 4th of July. So you see I shall be very busy up to the 4th, and on the 4th of July I always make it a point to remain on the Company's property in order to be on the look out for fire or trespass caused by drunken hoboos or evil disposed boys.

The day before yesterday I met ex-Governor Spriggs at the Butte Hotel. He is interested with Sadtler in the proposed zinc smelter for Montana, and says that three months ago they had a syndicate about formed in N. Y. to carry on the business of zinc smelting in this state, but a drop of 2c per pound in zinc occurring at that time upset their plans and caused a postponement until better price for zinc should prevail. Governor Spriggs said what they seemed to lack was a sufficient quantity of ore in Montana to back up a zinc smelter.

I told him that the Alice properties had more zinc ore of from 16 to 20 per cent exposed than any other concern in the world, that I knew of. And that if all the Alice veins were worked for zinc, it would be no trouble to secure an output of 2000 tons per day. This statement astonished the Governor. He said it would cost \$12.00 per ton to treat the ores and get all the values out or

nearly all. I showed him that the average minimum value of our ores were not less than \$24.00 per ton counting all the metals and that it was more likely to go higher. He said their concern ought to have a property like the Alice back of it for a back-bone, and he asked me who they could correspond with, with the view of working up a deal. I replied that yourself as president of the Company at Salt Lake would be the party to address on the subject. He said he would write Prof. Sadtler, who would undoubtedly communicate with you.

Yours truly,
(Signed) T. W. BUZZO,

Sup'l.

Complainants' Exhibit Z.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, June 30, 1901.

M. H. Walker, Esq.,

Pres. Alice G. & S. M'g Co.,

Salt Lake City.

Dear Sir:—

I have carefully read your favor of the 27th. We shall have our house in order to receive your New York friends, yourself and director J. R. Walker. I shall be very much pleased if you and J. R. W. come with the gentlemen or meet them here. Of course, we cant get in to see so much of the base ore on the north vein of the Alice as we would like to show or could show if the levels were all open, but on the 600, 500 and 400 levels they can see enough to arrive at an idea of what we

have, and surely ought to satisfy them. Then there is the Magna Charta and other places to look at. We surely can satisfy the visitors as to quantity with what they can see here now and learn from the miners who have worked in the deeper levels, which have been under water since I have been here.

A question of Great importance also, is making available the vast bodies of oxidized ore which we have, of which there is such a vast amount opened up in the south veins between the Alice hoist and the big mill. Of course this would be a different proposition from the treatment of the base ores, and while here you could interview Metallurgist G. B. Jacobs of whom I wrote you on the 27th and who says he can treat these oxidized ores at a profit where they have a value of \$4 to \$5 in silver and gold per ton. He claims he has had successful experience and has also tested the oxidized ores of this district. It may be well worth your while to meet him.

We have two mills, one of which perhaps, could be given up to the treatment of oxidized ores. If nothing came of the interview with Jacobs, I believe it would be a good idea to send Butlers & Company some samples of our oxidized ores to test, for a leaching process.

Of course, we would like some process, that would give us temporary help at least, concentration by water if successful with any of our ores, would be very wasteful as there would be more silver and gold carried away in the tailings than

we would save—but even this we might stand for awhile to keep agoing and opening up. Your visit here would be very desirable, not forgetting to have Rob come with you, as he is alive on these subjects and so deeply interested.

The weather is so cool that we have steam heat on in the office as I write.

Yours truly,
(Signed) T. W. BUZZO,
Sup't.

[Testimony of A. H. Melin, for Complainants.]

Deposition of A. H. MELIN, a witness called in behalf of the complainants being by the Commissioner duly sworn, testified in substance as follows:

My name is A. H. Melin. I live in New York City. At the present time I am secretary and treasurer of the Amalgamated Copper Company and have been since February, 1905. I am secretary and treasurer of the Anaconda Copper Mining Company; have been since 1911, I think, November. I was assistant secretary from 1905 until 1911. Prior to 1905, I lived in Montana and was auditor out there from 1893 until 1900, I think, of the Anaconda Company. No, I am mistaken there. I first was employed on the railroad, but in an auditing capacity. It was the Butte, Anaconda Pacific Railroad, I think for three years, and then went with the company itself. I think that was 1896. I think I came to New York in 1899, either 1899 or 1900. I assumed the same line of duty when I came here,—auditor of the

company and remained that until 1905, I think. I am not sure. At the time they took it over I was brought to New York. They wanted someone here who knew about the affairs in Montana. That is what I always understood. I came here at the time the Amalgamated Company acquired its stock in the Anaconda Company, about 1899 or 1900. The chief controlling factor in the Anaconda Copper Mining Company during the time that I was with it in Montana was Mr. Marcus Daly. As to other companies eventually going into the Amalgamated he was more or less prominently associated with Hamilton's Lumber Company, and I don't know but what the Big Blackfoot Milling Company, Diamond Coal & Coke Company. That was a little later. Mountain Trading Company, Washoe Company, Hennessy Mercantile Company and the Copper City Commercial Company. I have not available a copy of the articles of the Amalgamated Company. I have no copy of the articles in my files, that I know of. I have a copy of the Anaconda. I haven't a printed copy of the Amalgamated Articles. When I came here to New York, I don't know whether it was the Anaconda or the Boston and Montana company that was leading in the production of copper in the Butte camp. I should say the Anaconda was, as a matter of fact, far ahead of any of them. I am not positive about that. I could have a list of the original stockholders of the Amalgamated made for you. I have not got such a thing. I would have to go to Jersey City, I think for that. I don't

keep any stock books. The bank has the stock books—National City Bank. No, sir, I don't keep in the office here any record of who the stockholders are. The only books here are the working books, the ledger and books of account. From the record that I have I have no means of telling what properties the Amalgamated Copper Company acquired upon its incorporation. I don't know who would have that record. I don't know where I could get a list of the stocks acquired at the time the Amalgamated was formed. Yes, we were advised by Mr. Ryan yesterday that the Amalgamated stock was listed upon the Stock Exchange, and that in connection with the listing of the stock on the Exchange, it became necessary to supply to it a list of the properties owned by it, but that was before my time, though. I don't know of any copy of the documents thus filed with the Stock Exchange on file in our office. The only copy I have is when the capital stock of the Anaconda was increased. That is the only list I have got. Well, the Amalgamated bought the majority interest of the Anaconda in that trade I know, the exact amount I think was 620,000 shares. I am not clear about that, but I can verify it. That is my recollection 610 or 620,000 shares. I ought to be able to dig up the record of that. I cannot say offhand where it is. If I had been secretary at that time my records as a matter of course ought to show what I paid out and what I paid it for. I succeeded to the office of the former secretary, and he turned over the books to me. I have no

doubt I can get a statement of that. It was 620,000 shares of Anaconda; all of the shares of the Washoe Copper Company; all of the shares of the Big Black Foot Milling Company. I think; the majority of the shares of the Boston and Montana Consolidated Mining Company and a majority of the shares of the Butte and Boston Consolidated Mining Company. I don't know about the Parrot. I am not clear on that. If I knew just where to lay my hands on it, I should say it would take me about an hour to examine the records so that I could come with the memorandum to tell about this, the exact number of shares in the companies. I have not a copy of the advertisement printed in the public press over the signature of the National City Bank, advising the public of the organization of the Amalgamated and inviting subscriptions to its stock. I don't recall it. It certainly was not turned over in the files to me, and I never saw the circular that you speak of. I have the record of the proceedings of the directors and stockholders. (Witness produces book).

MR. WALSH: I want to offer the proceedings of the first meeting of the stockholders and the first meeting of the directors of the company.

Thereupon, the defendants, by their counsel, objected to the receipt in evidence of the minutes and proceedings of the first meeting of the stockholders of the Amalgamated Copper Company, and the first meeting of the Board of Directors of said Company, so offered in evidence, upon the ground that they, and each of them, were incom-



Vol II

23

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 25

PETER GEDDES, JOSEPH B. WALKER, JOSEPH B. BARR
ET AL, APPELLANTS,

ANACONDA COPPER MINING COMPANY ET AL

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

petent, irrelevant and immaterial, which said objection was overruled by the court, and exception noted by said defendants.

(Whereupon the proceedings of the first meeting of the stockholders and the first meeting of the directors of the company were offered and received in evidence and marked Complainants' Exhibit "D" and are in the words and figures following, to-wit:

Exhibit D.

INCORPORATORS' MINUTES.

Minutes of the first meeting of the Incorporator and Subscribers to the Capital Stock of

AMALGAMATED COPPER COMPANY

held at the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street Jersey City, N. J., on the 27th day of April, 1899, at 4 o'clock in the afternoon, for the purposes of perfecting the organization of the Company, electing directors and transacting such other matters as may properly come before the meeting..

There were present Messrs. Edwin T. Rice, Jr., Charles D. Burrage and Charles N. King, being all the incorporators and subscribers to the capital stock of the Company.

Mr. Edwin T. Rice, Jr., called the meeting to order, and upon motion was made temporary Chairman, and Mr. C. D. Burrage appointed temporary Secretary of the meeting.

A waiver of notice, signed by all the persons named in the Certificate of Incorporation, as subscribers to the capital stock, was read, and the

same was ordered to be entered on the minutes, and is as follows:

**WAIVER OF NOTICE OF THE FIRST MEETING
OF THE INCORPORATORS AND SUBSCRIB-
ERS AMALGAMATED COPPER COMPANY.
COMPANY.**

We, the undersigned, being the Incorporators and all the parties named in the Certificate of Incorporation of

AMALGAMATED COPPER COMPANY
a corporation of New Jersey, do hereby waive notice of the time, place, and purpose of the first meeting of the said Company, and do fix the 27th day of April, 1899, at 4 o'clock in the afternoon, as the time, and the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, N. J., as the place of the first meeting of the said Company, and we do hereby waive all the requirements of the Statute of the State of New Jersey as to notice and publication thereof.

Dated, Jersey City, N. J., April 27th, 1899.

(Signed)

EDWIN T. RICE, JR.
CHARLES D. BURRAGE,
CHARLES N. KING.

A certified copy of the Certificate of Incorporation, certified under the seal of the Secretary of State, was presented to the meeting, and was ordered to be entered upon the minutes, and the same is as follows:

**FIRST: The name of the corporation is the
AMALGAMATED COPPER COMPANY**

SECOND: The location of its principal office in the State of New Jersey is No. 243 Washington Street, in the City of Jersey City, County of Hudson. Said office is to be registered with New Jersey Corporations' Agency. The name of the agent therein and in charge thereof, and upon whom process against this corporation may be served, is the New Jersey Corporations' Agency.

THIRD: The objects for which, and for any of which, the corporation is formed, are to do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world, viz:

(1) To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in gold, silver, copper, lead, zinc, brass, iron, steel, and in all kinds of ores, metals and minerals, and in the products and bi-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, exchange, lease, acquire and deal in lands, mines and minerals, rights and claims and in the above specified products, and to conduct all business appurtenant thereto.

(2) To carry on as principals, agents, commission merchants or consignees, the business of mining, milling, converting, concentrating and smelting, treating, buying, selling, exchanging, manufacturing, and dealing in the above specified lands,

properties, rights, products, and all materials used in the manufacture of each, any and all of such articles, and to carry on as such principals, agents, commission merchants, or consignees, any other business which in the judgment of the Company, may be conveniently conducted in conjunction with any of the matters aforesaid.

(3) To manufacture, deal in and turn to account, a contract for the sale, supplies, letting on hire, erection, repairing and maintenance of any plant, machinery, implement and thing incidental to or connected with any of the business aforesaid.

(4) To apply for, purchase or otherwise acquire, and to hold, own use, operate, and to sell, assign, or to otherwise dispose of, to grant licenses in respect of or otherwise turn to account any and all inventions, improvements and processes in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and with a view to the working development of the same to carry on any business whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

(5) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, rights or privileges suitable or convenient for any purpose of its business, and to erect and construct, make, improve or aid, or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings,

roads, docks, piers, wharves, machinery and works of all kinds, in so far as the same may be appurtenant to or useful for the conduct of the business of the Company as above specified.

(6) To cause or allow the legal title, estate and interest in any property acquired, established or carried or by the Company to remain or be vested or registered in the name of or carried on by any other Company or Companies foreign or domestic, formed or to be formed, and either upon trust for, or as agents or nominees of this Company, or upon any other terms or conditions which the Board of Directors may consider for the benefit of this Company, and to manage the affairs or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks or securities thereof and to receive and distribute as profits the dividends and interest on such shares, stocks, or securities.

(7) To acquire and carry on all or any part of the business or property of any company engaged in a business similar to that authorized to be conducted by the Company, and to undertake in conjunction therewith any liabilities of any persons, firm, association or company possessed of property suitable for any of the purposes of this Company, or for carrying on any business which this Company is authorized to conduct, and as the consideration of the same to pay cash or to

issue shares, stocks, or obligations of this Company.

(8) To purchase, subscribe for, or otherwise acquire, and to hold, the shares, stocks, or obligations of any company organized under the laws of this State, or of any other State, or any territory or colony of the United State, or of any foreign country, and to sell or exchange the same, or upon a distribution of the assets or division of profits to distribute any such shares, stocks or obligations or the proceeds thereof, amongst the stockholders of this Company.

(9) To borrow or raise money for any purpose of the Company, to secure the same and the interests or for any other purpose to mortgage or charge the undertaking, or all or any part of the property present or after-acquired, subject to the limitations herein prescribed.

(10) To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other contract or obligation of, any corporation, whenever proper or necessary for the business of this Company, upon such terms and conditions and in such manner as may be prescribed by the By-Laws.

(11) To sell, let, develop, dispose of or otherwise deal with the franchise or undertaking of all or any part of the property of the Company upon any terms, with power to accept as the consideration any shares, stocks or other obligations of any other company.

(12) To carry out all or any part of the fore-

going objects as principals or agents, or in conjunction with any other person, firm, association or company, and in any part of the world.

(13) To do all such things as are incidental or conducive to the attainment of the above objects.

IN FURTHERANCE OF, and not in limitation of, the general powers conferred by the laws of the State of New Jersey, it is hereby expressly provided that the Company shall have also the following powers.

To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign, and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Company, bonds or otherwise.

To enter into, make, perform and carry out contracts of every kind, with any person, firm, association, corporation, without limit as to amount, to draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

To have one or more offices to carry on all or any of its operations and business, and without restriction to the same extent as natural persons might or could do, to purchase or otherwise ac-

quire, to hold, own, to mortgage, sell, convey or otherwise dispose of, without limit as to amount, real and personal property of every class and description in any State or territory of the United States and in any foreign country or place.

IN GENERAL, to carry on any other business in connection therewith, whether manufacturing, mining or otherwise, and with all the powers conferred by the laws of New Jersey upon corporations under the Act hereinafter referred to.

It is the intention that the objects and powers specified and clausued contained in this Third Article, shall, except where otherwise expressed in said article, be nowise limited or restricted by reference to, or inference from the terms of any other clause, of this or any other article or paragraph in this charter, but that the objects specified in each of the clauses of this article shall be regarded as independent objects.

The duration of the corporation shall be unlimited.

FOURTH: The total authorized stock of this corporation is seventy-five million (\$75,000,000) dollars, divided into seven hundred and fifty thousand (750,000) shares of one hundred dollars (\$100) each.

FIFTH: The names of the incorporators (the post office addresses of each is number 243 Washington Street, Jersey City, New Jersey) and the number of shares subscribed for by each, the aggregate of which (\$1,000.00) is the amount of cap-

ital with which the Company will commence business, are as follows:

Name	Number of Shares.
Charles N. King	One
Charles D. Burrage	Eight
Edwin T. Rice, Jr.	One

SIXTH The corporation may use and apply its surplus earnings or accumulated profits otherwise by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time and to such extent and in such manner, and upon such terms as its Board of Directors shall determine; and neither the property nor the capital stock so purchased and acquired nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payments of dividends, unless otherwise determined by a majority of the Board of Directors, or a majority of the stockholders.

The corporation, in its By-Laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number.

The number of directors at any time may be increased by vote of the Board of Directors, and in case of any such increase the Board of Directors shall have power to elect such additional directors, to hold office until the next meeting of stockholders, or until their successors shall be elected.

The Board of Directors shall have power with-

out the assent or vote of the stockholders, to make, alter, amend and rescind the By-Laws of the corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed, mortgages and liens upon the real and personal property of the corporation, and from time to time, to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made except pursuant to a vote of at least two-thirds of the Board of Directors.

The Board of Directors, by resolution passed by a majority of the whole Board, may designate three or more directors to constitute an Executive Committee, which Committee to the extent provided in said resolution or in the By-Laws of the corporation, shall have and may exercise the power of the Board of Directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers, which may require it.

The Board of Directors from time to time shall determine whether and to what extent, and at what time and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right of inspecting any account or book or document of the corporation except as conferred by statute or authorized by the Board of Directors or by a resolution of the Stockholders.

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this State at such places as may be from time to time designated by them.

It is the intention that the objects above specified in Article Third, except where otherwise expressed in said Article, shall be nowise limited, or restricted, by reference to or inference from the terms of any other article, clause or paragraph in this certificate.

The undersigned for the purpose of forming a corporation in pursuance of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations" (Revisions of 1896) and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate, and do respectively agree to take the number of shares of stock hereinbefore set forth and have accordingly hereunto set our hands and seals.

Dated, Jersey City; N. J. April 27th, 1899.

In presence of

EDWIN T. RICE, JR.	(L. S.)
CHARLES D. BURRAGE	(L. S.)
CHARLES N. KING	(L. S.)

State of New Jersey,
County of Hudson, ss.

BE IT REMEMBERED, that on the 27th day of April, A. D., eighteen hundred and ninety-nine, before the undersigned, personally appeared Ed-

win T. Rice, Jr., Charles D. Burrage and Charles N. King, whom I am satisfied are the persons named in and who executed the foregoing certificate, and I, having first made known to them and each of them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

10 cent

I. R. S.

Cancelled

AUGUSTUS C. KELLOGG,

Master in Chancery of New Jersey.

Received in the Hudson County, N. J. Clerk's office, April 27th, 1899, and recorded in Clerk's Record No. on page

(Signed) JOHN C. FISHER, Clerk.

"Filed April 27th, 1899,

GEO. WURTS,

Secretary of State."

STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

I, George Wurts, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of Amalgamated Copper Company, and the same is taken from and compared with the original filed in my office on the 27th day of April, A. D. 1899, and now remaining on file therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official Seal, at Trenton, this Twenty-Seventh day of April, A. D. 1899.

[Seal]

(Signed) GEORGE WURTS,

Secretary of State.

The Chairman presented a form of By-Laws for the government and regulation of the affairs of the Company, which was read article by article and unanimously adopted, and the same was ordered to be inserted at length upon the minutes, and is as follows:

BY-LAWS

of the

AMALGAMATED COPPER COMPANY.

Adopted by the Stockholders, April 27th, 1899.

TITLE

LOCATION.

1. The title of the corporation is the **AMALGAMATED COPPER COMPANY.**

2. The principal office in New Jersey shall be and be registered with the New Jersey Corporations Agency, 243 Washington Street, Jersey City, N. J.

The Company may also have an office in the City of New York, State of New York, and also offices at such other places as the Board of Directors may from time to time appoint or the business of the Company may require.

DIRECTORS.

3. The property and the business of the Corporation shall be managed by a Board of Directors, eight in number; they shall be chosen from the stockholders and shall hold office for one year and until others are elected and qualified in their stead. The number of Directors may be increased or decreased by amendment of the provisions of the By-Laws.

4. If the office of any Director, or of the Presi-

dent, Vice President, Secretary or Treasurer, one or more, becomes vacant, by reason of death, resignation, disqualification or otherwise, the remaining Directors, although less than a quorum, by a majority vote, may elect a successor or successors, who shall hold office for the unexpired term.

5. Any Director or other elected officer may resign his office at any time. The acceptance of a resignation shall not be required to make it valid.

STOCKHOLDERS.

GENERAL PROVISIONS.

6. All meetings of stockholders must be held within the State of New Jersey, and at the principal office of the Company in Jersey City.

At all meetings of the stockholders, shareholders may vote either in person or by proxy in writing.

7. A majority of the stock issued and outstanding shall be requisite to constitute a quorum.

8. The annual meeting of the stockholders, after the year 1899, shall be held on the first Monday of June in each year, at Jersey City, N. J., at 10 o'clock A. M. When they shall elect by a plurality vote, the aforesaid Directors, to serve for one year and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote, in person or by proxy, for each share of stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

Notice of the annual meeting shall be mailed to

each stockholder at his address as the same appears upon the records of the Company at least seven days prior to the meeting.

9. Special meetings of the stockholders shall, at the request of any two Directors, be called by the Secretary, by mailing a notice stating the object of and business to be transacted at such special meeting, at least seven days prior to the date of meeting, to each stockholder on record at his post-office address as the same appears on the records of the Company.

OFFICERS.

10. At the first meeting after the election of Directors, when there shall be a quorum, the Board of Directors shall elect, by ballot, a President and Vice President from their own number, who shall hold office for one year and until their successors are elected and qualify.

The Board shall also annually choose a Secretary and a Treasurer who need not be members of the Board, or one person to act as both Secretary and Treasurer, who shall at the pleasure of the Board hold office for one year, unless sooner removed by the Board, which the Board shall have power at any time to do, with or without cause.

MEETINGS OF DIRECTORS.

11. A majority of the Directors in office shall be necessary to constitute a quorum for the transaction of business, except to adjourn.

12. Special meetings of the Board may be called by the President or Vice President on one day's notice to each Director.

13. The directors may hold their meetings and have an office and keep the books of the Company (except the stock and transfer books) outside of the State of New Jersey, at the place or places as they may from time to time fix upon.

POWER OF DIRECTORS.

14. The Board of Directors shall have the management of the business of the Company, and in addition to the powers and authorities by these By-Laws expressly conferred upon them, may exercise all such powers and do all such things, as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the Statute, of the Charter and of these By-Laws.

15. Without prejudice to the general powers conferred by the last preceding clause and the other powers conferred by these By-Laws, the Board of Directors shall have the following powers:—

To purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorized to acquire, at such prices and on such terms and conditions, and for such consideration as they think fit.

At their discretion, to pay for any property or rights acquired by the Company, either wholly or partially in money or in stock, bonds, debentures or other securities of the Company.

To appoint, and at their discretion remove or suspend such managers, subordinates, assistants or otherwise, and clerks, agents, and servants, permanently or temporarily, as they may from time

to time think fit, and to determine their duties and fix, and from time to time, change their salaries or emoluments.

To confer by resolution, upon any officer of the Company, the right to choose, remove or suspend such subordinates officers, agents or factors.

To appoint any person or persons to accept and hold in trust for the Company any property belonging to the Company, or in which it is interested, or for any other purpose, and to execute and do all such duties and things as may be requisite in relation to any such trust.

To determine who shall be authorized to sign on the Company's behalf, bills, notes, receipts, acceptance, endorsements, checks, releases, contracts and documents, and stock certificates.

STANDING COMMITTEE.

16. There may be an Executive Committee of Three Directors appointed by the Board, who shall meet when they see fit. They shall have authority to exercise all the powers of the Board at any time when the Board is not in session. The President shall also ex-officio be a member of the Executive Committee.

Power is hereby given to the Executive Committee to act by the written consent of a quorum thereof, although not formerly convened.

PRESIDENT.

17. The President shall be of the chief executive officer and head of the Company, and in the recess of the Board of Directors and of the Executive Committee shall have the general control and

management of its business and affairs, subject, however, to the right of the Directors to delegate any specific power, except such as may be by Statute exclusively conferred on the President, to any other officer or officers of the Company.

VICE PRESIDENT.

18. The Vice President shall be vested with all the powers, and required to perform all, the duties of the President in his absence.

THE SECRETARY.

19. The Secretary shall be ex-officio Clerk of the Board of Directors and of the standing committee; he shall attend all sessions of the Board, and act as clerk thereof, and shall record all votes and the minutes of all proceedings in the book to be kept for that purpose.

He shall perform like duties for the standing committees when required.

He shall give notice of all calls for installments to be paid by the stockholders, and shall see that proper notice is given of all meetings of stockholders of the Company and of the Board of Directors.

He shall be sworn to the faithful discharge of his duty and shall perform such duties as may be required by the Board of Directors or the President and shall at all times be subject to the orders of the Board of Directors.

THE TREASURER.

20. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and

to the credit of the Company, in such depositaries as may be designated by the Board of Directors.

He shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Directors at the regular meetings of the Board or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Company.

DUTIES OF OFFICERS MAY BE DELEGATED.

21. In case of the absence of an officer of the Company or, for any other reason that may be sufficient to the Board, the Board of Directors may delegate his powers and duties to any other officer, or to any Director, for the time being.

FISCAL YEAR.

22. The fiscal year of the Company shall begin the first day of May in each year.

DIVIDENDS.

23. Before payment of any dividends or making any distribution of profits, there shall be set aside out of the net profits of the Company such sum or sums as the Directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for any such other purpose as the Directors shall think conducive to the interests of the Company.

WAIVER OF NOTICE.

26. Any stockholder, officer or Director may

at any time waive any notice required to be given under these By-Laws.

27. Wherever under the provisions of these By-Laws notice is required to be given to any Director, officer or stockholder, it shall not be construed to mean personal notice, but such notice shall be given in writing by depositing the same in the Post Office or letter box, in a post-paid, sealed wrapper, addressed to such Director, officer or stockholder, at his or her address (other than the principal office of the Company in New Jersey) if and as the same appears on the books of the Company, and the time of the giving of such notice shall be deemed to be the time when the same shall be thus mailed.

ALTERATIONS OF BY-LAWS.

28. The Directors, may at any regular or at any special meeting alter or amend these By-Laws.

The Board of Directors may alter or amend these By-Laws at any time, provided five days' notice in writing shall have been sent to each of the Directors of the proposed amendment.

Upon motion, duly seconded and carried, the election of Directors by ballot was then proceeded with.

Mr. Charles N. Conklin was appointed Inspector of Election.

The Chairman announced that nominations for Directors were now in order.

The following named persons were nominated for Directors of the Company, Messrs. Edwin T.

Rice, Jr., Charles D. Burrage, Charles N. King, Bancroft G. David, Richard D. Willard, Edward G. Storey and William B. Bristler, it appearing that Mr. Charles D. Burrage, one of the incorporators, had transferred one share of stock to each of the following named persons: Bancroft G. Davis, Horace A. Davis, Richard D. Willard, Edward G. Storey and Wm. B. Brister.

A separate ballot having been taken, the Inspector announced that there were ten shares voted, each for the above named persons, being a total of all the shares subscribed for in the Certificate of Incorporation.

The Chairman then declared:—

Edwin T. Rice, Jr.,	Charles D. Burrage,
Horace A. Davis,	Richard D. Willard,
Charles N. King,	Bancroft C. Davis,
Edward G. Storey and	William B. Brister.

elected Directors of the Company, to hold office for the ensuing year or until their successors are chosen.

The Secretary stated that Messrs. Edwin T. Rice, Jr., Charles D. Burrage and Charles N. King had waived all notice of payment of assessment on the capital stock and had handed in their subscriptions amounting to one Thousand Dollars (\$1,000) in currency, which amount is the amount with which this Company commenced business.

Upon motion duly made and seconded, and by unanimous vote, it was

VOTED: That the Board of Directors of this Company be authorized to purchase of William

S. Bogart, for the sum of seventy-five million dollars (\$75,000,000.) Six hundred and twenty thousand shares of the Anaconda Copper Mining Company, One Hundred and fifteen thousand seven hundred and nineteen shares of the Parrot Silver and Copper Company, Eighty-three thousand, seven hundred and two shares of the Colorado Smelting and Mining Company, all the Capital stock of the Washoe Copper Company, all of the shares of the Diamond Coal & Coke Company, all the property known as the Carbon Coal Company, all the shares of the Big Blackfoot Milling Company, all the shares of the Capital Lumber Company, all the property known as the St. Regis Lumber Company, all the shares and property of the D. J. Hennessy Mercantile Company, all the shares of the Copper City Commercial Company, all the shares of the Montana Meat Company.

And it was further unanimously

VOTED: That to enable the Board of Directors to carry said vote into effect, said Board of Directors is hereby authorized to increase the capital stock of said Company from one thousand dollars (\$1,000), the amount with which it began business, to Seventy-five Million Dollars (\$75,000,000), or any part thereof, whenever in the judgment of the said Board it is necessary or advisable; and that the proper officers of this Company be authorized to execute and file such certificate to that effect as may be necessary with the Secretary of State.

The meeting adjourned subject to the call of the

President.

A true record. Attest:

C. D. B.,
Secretary.

MINUTES OF DIRECTORS' MEETING.

Minutes of the proceedings of the first meeting of the Board of Directors of

AMALGAMATED COPPER COMPANY.

held at the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, N. J. on the twenty-seventh day of April, 1899, at four o'clock in the afternoon.

There were present Messrs. Edwin T. Rice, Jr., Charles D. Burrage, Charles N. King, Bancroft G. Davis, Horace A. Davis, Richard D. Willard, Edward C. Story and William B. Brister, being all the Board of Directors elected by the stockholders.

Mr. B. G. Davis called the meeting to order, and upon motion was made temporary Chairman and Mr. Burrage temporary secretary of the meeting.

A waiver of notice was presented to the meeting by the Secretary signed by all the Board of Directors elected by the stockholders, and upon motion was ordered to be filed and a copy thereof entered upon the records, and is as follows:

WAIVER OF NOTICE OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF

AMALGAMATED COPPER COMPANY

We, the undersigned, being the Board of Directors, elected by the stockholders of the above named corporation, organized under the laws of

the State of New Jersey, do hereby waive notice of the time and place of the first meeting of the said Board of Directors and of the business to be transacted at said meeting.

We designate the 27th day of April, 1899, at four o'clock in the afternoon, as the time, and the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, N. J. as the place of the first meeting of the said Board of Directors. The purpose of said meeting being the election of officers; the authorization of the issuing of stock of the said company, the authorization of the purchase of property, if necessary for the business of said Company, and the transaction of such other business as may be necessary or advisable to facilitate and complete the organization of said Company, for the purpose of carrying on its contemplated business.

And we do hereby waive all the requirements of the laws of the State of New Jersey, both as to notice and publication thereof, of the time, place and object of the meeting.

Dated, Jersey City, N. J.

April 27th, 1899.

(Signed) CHARLES D. BURRAGE,
CHARLES N. KING
WM. B. BRISTER
BANCROFT C. DAVIS
RICHARD D. WILLARD
EDWIN T. RICE, JR.
EDWARD G. STOREY
HORACE A. DAVIS.

On motion it was resolved that the Board proceed to the election of officers, and Mr. Harold J. Hockin was appointed Teller of Election.

Mr. B. G. Davis was nominated for the office of President; Mr. H. A. Davis for Vice President; Mr. C. D. Burrage for Secretary; Mr. G. D. Burrage for Treasurer.

There being no other nominations for said offices, a separate ballot was taken on each of the foregoing nominations, and the following persons were stated by the Teller to have been elected to the following respective offices, to-wit:

President	B. G. Davis
Vice President	H. A. Davis
Secretary	C. D. Burrage
Treasurer	C. D. Burrage

The above named persons were thereupon declared by the Chairman to be the respective officers of the Company for the ensuing year, or until their successors are chosen.

The oath required by law was duly administered to the Secretary, who entered upon his duties as Secretary of the meeting.

The oath is as follows:

State of New Jersey
County of Hudson, ss.

I, Charles D. Burrage, do solemnly swear that I will faithfully discharge the duties of the office of Secretary of

AMALGAMATED COPPER COMPANY
to the best of my skill and ability, so help me God.

Subscribed and sworn to before me, this 27th day of April, 1899.

(Signed) CHARLES D. BURRAGE.

(Signed) AUGUSTUS G. KELLOGG,

Master in Chancery of New Jersey.

The Treasurer presented his bonds, which on motion was approved and ordered to be placed in the hands of the President of the Company, and a copy thereof entered upon the minutes of the Company and is as follows:—

KNOW ALL MEN BY THESE PRESENTS, that we, Charles D. Burrage, of Needham, Massachusetts, as principal, and Albert C. Burrage of Boston, Massachusetts, as surety, are held and firmly bound unto the above named corporation, its successors and assigns, in the sum of One Thousand Dollars (\$1,000.) lawful money of the United States, to be paid to such corporation, its successors and assigns, for which payment well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this twenty-seventh day of April, 1899.

The condition of the above obligation is that,

WHEREAS the said Charles D. Burrage has been duly elected and is about to enter upon the duties of his office as Treasurer of the above named Company,

NOW, THEREFORE, if he shall in all respects

fully and faithfully discharge his duties as such Treasurer, so long as he shall hold the said office or continue therein during the term for which he is now or may hereafter be elected, appointed or hold over, and also, if, in case of his death, resignation or renewal from office from any cause, all the books, papers, vouchers, money or other property of whatever kind in his possession belonging to the corporation, shall be forthwith restored to the corporation, then this obligation is to be void, otherwise to be in full force and virtue.

(Signed) CHARLES D. BURRAGE (L. S.)

ALBERT C. BURRAGE (L. S.)

Signed, Sealed and Delivered
in the presence of

Upon motion it was ordered that the Company procure a corporate seal to be as follows:—

“AMALGAMATED COPPER COMPANY

Incorporated

1899

New Jersey.”

It was unanimously

VOTED: That WHEREAS, the following property is necessary for the business of the Company and is of the fair value of Seventy-five Million Dollars (\$75,000,000) in the judgment of the Directors, and the purchase thereof has been authorized by the stockholders, therefore this Company do purchase of William S. Bogert for the sum of Seventy-five Million Dollars (\$75,000,000) as soon as said sale can be arranged and per-

fect, the following property, viz: Six Hundred and twenty thousand shares of the Anaconda Copper Mining Company, One hundred and fifteen thousand seven hundred and nineteen shares of the Parrot Silver & Copper Company, Eighty-three thousand, seven hundred and two shares of the Colorado Smelting and Mining Company, all the Capital Stock of the Washoe Copper Company, all the shares of the Diamond Coal & Coke Company, all the property known as the Carbon Coal Company, all the shares of the Big Black Foot Milling Company, all the shares of the Capital Lumber Company, all the property known as the St. Regis Lumber Company, all the shares and property of the D. J. Hennessy Mercantile Company, all the shares of the Copper City Commercial Company, and all the shares of the Montana Meat Company, and that the Treasurer be authorized to pay for the same out of the funds of the Company.

It was unanimously

VOTED: That in order to carry the foregoing vote into effect the Capital stock of this Company be increased from one thousand dollars (\$1,000) to Seventy-Five Million Dollars (\$75,000,000.).

Upon motion the secretary was authorized to procure the necessary books and stationery for the Company, and to have these minutes and the minutes of the stockholders' meetings entered in the minute book.

Upon motion duly made and seconded the following resolution was adopted:—

"ORDERED, (1) That in compliance with the laws of the State of New Jersey, this corporation have and continuously maintain a principal office and place of business within the State of New Jersey, and have an agent at all times in charge thereof, and upon which agent process against this corporation may be served, and therein keep the stock and transfer books for the inspection of all who are authorized to see the same and for the transfer of stock. That the books in which the transfers of stock shall be registered and the books containing the names of the shareholders shall be at all times during the usual hours of business open to the examination of every stockholder at said principal office.

That the name of this corporation be at all times conspicuously displayed at the entrance of its principal office in this State.

And be it further

ORDERED, until this resolution be duly rescinded,

(2) That such office and place of business be in and at the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, New Jersey, and that this Company be registered with the said Company.

(3) That the New Jersey Corporations' Agency of New Jersey, being by its charter expressly authorized to act in New Jersey as the agent of corporations, domestic and foreign, to the same extent as a natural person, a resident of the State of New Jersey, be and hereby is ap-

pointed the agent of this corporation for all of the aforesaid purposes and the agent of this Company upon whom process against this corporation may be served within the State of New Jersey, and also the transfer agent of the stock of this Company."

Mr. William B. Brister presented his resignation as a director of the Company.

VOTED: That the resignation of Mr. Brister be Accepted.

VOTED: To proceed to the election of a director to fill the vacancy. A ballot was taken, seven votes being cast, all of which were for F. P. Olcott, who was declared duly elected director.

Mr. Charles N. King presented his resignation as a director of the Company.

VOTED: That the resignation of Mr. King be accepted.

VOTED: To proceed with the election of a director to fill the vacancy.

A ballot was taken six votes being cast, all of which were for Albert C. Burrage, who was declared duly elected director.

Mr. Edwin T. Rice, Jr., presented his resignation as a director of the Company.

VOTED: To proceed to choose by ballot a director to fill the vacancy.

A ballot was taken, five votes being cast, all of which were for Marcus Daly, who was declared duly elected a director of the Company.

VOTED: That the meeting adjourn to 26

Broadway, New York City, at 4:30 P. M. the same day.

A true record.

Attest:

Secretary.

Pursuant to adjournment, a meeting of the Board of Directors of the Amalgamated Copper Company, was duly held at 26 Broadway, New York City, at 4:30 P. M., April 27, 1899.

PRESENT: Albert C. Burrage, F. P. Olcott, B. G. Davis, H. A. Davis, R. D. Willard, E. G. Storey, C. D. Burrage, a quorum.

Mr. C. D. Burrage presented his resignation as director of the Company.

Upon motion the resignation of Mr. Burrage was accepted.

VOTED: To proceed to the election of a director to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for H. H. Rogers, who was declared duly elected director of the Company.

Mr. H. A. Davis presented his resignation as Vice President of the Company.

VOTED: That the resignation of Mr. Davis as Vice President be accepted.

VOTED: That the Meeting proceed to choose a Vice President by ballot to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for Henry H. Rogers, who was declared duly elected Vice President of the Company.

Mr. H. A. Davis presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Davis be accepted.

VOTED: To proceed to choose a director to fill the vacancy.

A ballot was taken and six votes were cast, all of which were for James Stillman, who was declared duly elected a director of the Company. Mr. Stillman was present and accepted the position.

Mr. R. D. Willard presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Willard be accepted.

VOTED: That the meeting proceed to elect a director to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for H. P. Flower, who was declared duly elected a director of the Company. Mr. Flower was present and accepted the position.

Mr. E. C. Story presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Story as a director of the Company be accepted.

VOTED: To proceed to the election of a director to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for Robert Bacon, who was declared duly elected a Director of the Company.

Mr. Bancroft G. Davis tendered his resignation

as President of the Company. Upon motion it was

VOTED: That the meeting proceed to choose a President by ballot to fill the vacancy.

A ballot was taken, five votes were cast, all being for Marcus Daly, who was declared duly elected President of the Company.

Mr. Bancroft G. Davis then presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Davis be accepted.

VOTED: That the meeting proceed to choose a director to fill the vacancy.

A ballot was taken and five votes were cast, all for William Rockefeller, who was declared duly elected a director of the Company.

Mr. C. D. Burrage presented his resignation as Secretary and Treasurer of the Company.

VOTED: That the resignation be accepted.

VOTED: That the meeting proceed to choose by ballot a Secretary and Treasurer to fill the vacancy.

A ballot was taken and six votes were cast, all for Wm. G. Rockefeller, who was declared duly elected Secretary and Treasurer of the Company.

VOTED: That the meeting proceed to ballot for an executive Committee of three.

A ballot was taken, six votes being cast, all of which were for Henry H. Rogers, William Rockefeller and Albert C. Burrage, who were thereupon declared duly elected.

The Treasurer reported that the stock had been

duly transferred to each of the new directors and officers.

VOTED: That the national City Bank be authorized to receive subscriptions until twelve o'clock on Thursday, May 4, 1899, for seven hundred and forty-nine thousand nine hundred and ninety shares (749,990) of the capital stock of this Company, at the par value of one hundred dollars (\$100) per share.

VOTED: That a committee consisting of William Rockefeller and James Stillman be a committee of this Board to make the allotment.

Upon motion, the meeting adjourned, subject to the call of the President.

A true record.

Attest:

(Signed) CHARLES D. BURRAGE,

Secretary.

A meeting of the Board of Directors of the Amalgamated Copper Company, was held at the office of Mr. Wm. Rockefeller, 26 Broadway, New York, at 3 o'clock P. M. Monday, May 22nd, 1899, a quorum being present.

A notary public's certificate of the oath of the Secretary was presented and ordered placed on file.

The oath was as follows:

"State of New York

County of New York

Borough of Manhattan, ss.

I, Wm. G. Rockefeller, do solemnly swear that I will faithfully discharge the duties of the office

of Secretary of the Amalgamated Copper Company, to the best of my skill and ability, so help me God.

(sg) WM. G. ROCKEFELLER.

Subscribed and sworn to before me this 27th day of April, 1899

(sg) MARTIN JUDGE,
Notary Public, Kings Co.

Certificate filed in New York Co."

The Treasurer presented his bond, which on motion was approved and ordered to be placed on file, and a copy thereof entered upon the minutes of the Company and it is as follows:

KNOW ALL MEN BY THESE PRESENTS.

THAT WE, F. P. ADDICKS, of New York City, New York, are held and firmly bound unto AMALGAMATED COPPER COMPANY, in the sum of Five Thousand Dollars (\$5,000) lawful money of the United States of America, to be paid to the said AMALGAMATED COPPER COMPANY, its successors and assigns; to which payment well and truly be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals. Dated this twenty-seventh day of April, A. D. 1899.

THE CONDITION OF THE ABOVE OBLIGATION, is, that WHEREAS, WILLIAM G. ROCKEFELLER, above named has been duly elected and is about to enter upon the duties of his office as Treasurer of the AMALGAMATED COPPER COMPANY.

NOW THEREFORE, if he shall in all respects fully and faithfully discharge his duties as such Treasurer during the term for which he is now or may hereafter be elected or appointed, then this obligation is to be void otherwise to remain in full force and virtue.

Signed, Sealed and Delivered in the presence of
Chas. N. King"

F. P. ADDICKS

WM. G. ROCKEFELLER.

IT WAS VOTED that the reading of the minutes of the last meeting be dispensed with.

IT WAS VOTED that each member of the Board of Directors and the Executive Committee receive a fee of Ten Dollars for each meeting attended by him.

IT WAS VOTED that the National City Bank of New York, be appointed transfer agent, and the Central Trust Company of New York, Registrar of Transfers, and that said Transfer Agent and Registrar be authorized and instructed to issue the Capital Stock of this Company to the amount of Seven hundred and fifty thousand shares (750,000).

IT WAS VOTED that the Treasurer be authorized to deposit the funds of the Company in such banks and trust companies as the Executive Committee may direct from time to time.

IT WAS VOTED that the Treasurer be authorized to hire for the use of the Amalgamated Copper Company, a Safe Deposit Box as the Executive Committee may direct from time to time, and to

deposit therein such of the shares, deeds, bonds, funds and other property of the Company, as he may deem expedient from time to time, and that power to open said box be given to each of the following officers:—

President, Vice President, Treasurer or Secretary, when accompanied by a member of the Executive Committee, provided that when anyone of the officers is also a member of the Executive Committee he shall be accompanied by either another officer or another member of the Executive Committee.

Anson R. Flower was then duly elected by ballot a Director of the Company in place of the Hon. Roswell P. Flower, deceased.

IT WAS VOTED that the Executive Committee be authorized and empowered to choose and employ such officers and employees not named in the By-Laws of the Company, as they may deem necessary, and to fix their compensation.

IT WAS VOTED that the Executive Committee be authorized to hire for the Company the rooms on the sixth floor of the easterly wing of No. 52 Broadway, New York City, for such length of time and upon such terms as they may deem expedient.

IT WAS VOTED that the Treasurer be authorized to purchase for the Company, the Seventeen thousand three hundred and fifty-four shares (17,354) of stock of the Colorado Smelting & Mining Company, not already acquired, for the sum of Four hundred and seventy-eight Thousand

five hundred and fifty-four and 66/100 Dollars (\$478,554.66).

IT WAS VOTED that the Treasurer be authorized to pay to the National City Bank, New York, Fifty thousand Dollars (\$50,000) for its services as fiscal agent in selling and issuing the shares of the Amalgamated Copper Company, and receiving the subscription therefor.

The meeting adjourned subject to the call of the President.

(Signed) WM. G. ROCKEFELLER

Secretary.

These proceedings recite the purpose of the Company to acquire 620,000 shares of the Anaconda Copper Mining Company, and those shares were shortly thereafter acquired; 115,719 shares of the Parrot Silver & Copper Company, 83,702 of the Colorado Smelting & Mining Company; all the capital stock of the Washoe Copper Company. The first company was engaged in mining copper, the Parrot the same, the Colorado the same, the Washoe the same. Those were all engaged in producing copper at that time, and Mr. Daly was initially in the Anaconda Copper Mining Company and the Washoe Copper Company. I don't think he had anything to do with the Parrot Silver & Copper Company, or the Colorado Smelting & Mining Company prior to that time; still I am not sure. Those, so far as I knew, were owned by other parties. The Diamond Coal & Coke company was engaged in mining coal in Diamondville, Wyoming. Mr. Daly was interested in that

company. It supplied coal for the plants operated in Butte and Anaconda. The smelter of the Anaconda and the Washoe Company was in Anaconda. The Big Blackfoot Milling Company was engaged in the lumber business. It was providing the mines in Butte with mine timbers. The Capital Lumber Company is a subsidiary of the Big Blackfoot. That is the local agency at Helena. The St. Regis Lumber Company is a lumber producing company with mills at St. Regis. It likewise was furnishing mine timbers to the mines near Butte. The D. J. Hennessy Mercantile Company is engaged in the business of dry goods, notions, general merchandise, selling its wares to the miners engaged in working in the mines and anybody else who is willing to buy. The same with the Copper City Commercial Company at Anaconda; also the Anaconda Meat Company at Anaconda, right across the street from the commercial company, which was likewise engaged in selling its products to the people working in the mines and smelters. As to the stocks of the Diamond Coal and Coke Company, the Carbon Coal Company, the Big Blackfoot Milling Company, the St. Regis Company, the D. J. Hennessy Mercantile Company, and the Copper City Commercial Company and the Montana Meat Company, I don't know that the entire capital stock was acquired by them at this time. If I remember, did not Mr. Hennessy own part of the Mercantile and Copper City. I am not positive whether my records will enable me to tell just how much of this

stock was actually acquired. I will look it up. It appears that at the time of the organization of the Amalgamated, the stocks of the Boston and Montana and Butte and Boston were not acquired by the company. The officers did not become interested in that stock at the time of the organization. It was a year later or two years later that the company eventually acquired a majority control. I don't know whether the company or the officers of the Amalgamated Copper Company, Mr. Daly and his associates became heavily interested in the stocks of the Boston and Montana and the Butte and Boston. I think the next reference to the acquisition of any property by the Amalgamated Copper Company is shown in here. (Witness refers to book.)

MR. WALSH: I will offer in evidence the record of the meeting of the Board of Directors of the Amalgamated Copper Company, held May 21st, 1901, commencing on page 43 and extending down to and including page 45.

Thereupon, the defendants objected to the receipt of said record in evidence, and to the offer of the complainants, for the reason that the same was incompetent, irrelevant and immaterial, which said objection was overruled by the court, to which ruling of the court the defendants, and each of them, excepted.

(Whereupon record of the meeting of the Board of Directors of the Amalgamated held May 21, 1901, was offered and received in evidence and

marked complainants' Exhibit "E", and is in the words and figures following, to-wit:

Exhibit E.

An adjourned meeting of the Board of Directors of the Amalgamated Copper Company, was held at the New York office of the Company, No. 52 Broadway, on Tuesday, May 21st, 1901, a quorum being present.

Mr. Rogers took the Chair.

The minutes of the last meeting of the Board of Directors held April 30th, 1901 were read and approved.

The Chairman laid before the meeting a letter dated May 18th, 1901, which he had received from Messrs. Kidder, Peabody & Company, offering, subject to the approval of the shareholders of the Boston & Montana and Butte & Boston Companies to sell to this Company, in exchange for its full-paid stock, at least two-thirds of the Capital Stock of each of those Companies, at the rate of \$425. per share, for the stock of the former Company, and \$115. per share for the stock of the latter Company.

The Chairman stated that, in the early part of April, he had had some communications with Mr. Winsor, of Messrs. Kidder, Peabody & Company, on the subject, pursuant to which the latter had requested the shareholders to deposit their certificates of stock with them; that Mr. Winsor was unable to be present at the meeting today, but would be able to come over tomorrow to explain the situation in Boston and express his views in

relation to the present situation. The Chairman then stated that, for the purpose of protecting the investment, which the Amalgamated Copper Company had already made, not only in the stock of the Boston and Montana Company, and of the other Companies at Butte, which owns claims adjacent to each other, and especially those which had been attacked or might be attacked by the Heinze litigants, he had thought it might be advisable for the Amalgamated Company to acquire the stocks of two Boston Companies, if a majority of the stocks of both companies could be obtained upon reasonable terms, to be approved by the stockholders, at a Special Meeting to be called for that purpose, and that, as he was personally a stockholder and officer of the Butte & Boston Company, he would not take any part in the negotiation.

The Chairman then detailed the various steps which had been taken by Mr. Winsor to induce a deposit by the shareholders of the two Companies, and read to the Committee a letter of Messrs. Kidder, Peabody & Company, dated April 15th, 1901, to the Directors of the Butte and Boston Company, and a letter of Mr. Rockefeller, as Secretary of that Company, to the shareholders, and also a circular letter addressed to Messrs. Kidder, Peabody & Company, to the shareholders of the Boston & Montana Company, and stated that he had been informed that more than two thirds of the holders of the shares of each Company had deposited their certificates with Messrs. Kidder, Peabody &

Company, who however, reported that many of the shareholders were showing a good deal of uneasiness over the legal complications in New Jersey, and that Messrs. Kidder, Peabody & Company were over-run with inquiries by shareholders, who were growing impatient over the delay, and that if any propositions were to be carried through, no time should be lost in putting it into effect.

Mr. Flower stated that Messrs. Bacon, Olcott and Stillman were not officers or directors of either the Boston & Montana Consolidated Copper-Silver Mining Company, or the Butte and Boston Consolidated Mining Company, and that as he understood, they had no interest whatever therein, which was admitted to be a fact by those gentlemen, and therefore on his motion, the following resolutions having been duly seconded, were unanimously adopted:—

RESOLVED That Messrs. Bacons, Olcott and Stillman, be and they are hereby appointed a committee with full power to investigate and determine all questions involved in the proposed purchase of the stocks of the said two Companies, with full power to employ experts to examine and report upon the properties of the said Companies, and take such other steps as they may deem advisable to fully inform themselves upon the subject, and also with full power to contract for the purchase of said stocks, subject, however, to the approval of this Board and of the shareholders

of the Company, at a meeting to be duly called for that purpose.

RESOLVED That it is advisable that the capital stock of this Company be increased from \$75,000,000 to \$155,000,000.

RESOLVED That a meeting of the stockholders of the company be and the same is hereby called, to be held at the Company's office in the City of Jersey City, New Jersey, on the 6th day of June, 1901, at 10 o'clock in the forenoon, to take action on the foregoing resolution for the increase of the capital stock of the Company.

RESOLVED That there be submitted to the said meeting of the stockholders, the question of the advisability of acquiring the stocks of the Boston & Montana Consolidated Copper & Silver Mining Company, and of the Butte and Boston Consolidated Mining Company either for cash or by issuing therefor full paid stock of the Company.

RESOLVED That the stockholders be notified that there will be also submitted at such meeting a report of a special committee appointed by the Board to consider the terms of the acquisition of said stocks, together with such recommendation, if any, as the Board may make with respect thereto.

RESOLVED That when the meeting adjourns it do adjourn to meet on Wednesday, May 29th, 1901, at 3:30 P. M.

On motion the meeting then adjourned.

(Signed) WM. G. ROCKEFELLER,

Secretary.

Q. Now, Mr. Melin, I notice the record recites as follows: "The Chairman then stated that for the purpose of protecting the investment which the Amalgamated Copper Company had already made not only in the stock of the Boston and Montana Company and of the other companies at Butte, which own claims adjacent to each other." Apparently, then, the Amalgamated Copper Company had acquired some interest in the stock of the Boston and Montana prior to this date? A. Don't you think that applies to the 620,000 shares of Anaconda?

Q. It says, "Not only in the stock of the Boston and Montana Company." A. Here is the first reference. Meeting of December 21st, 1899, 10,000 shares.

Q. You find an earlier record, do you? A. Yes, sir.

MR. WALSH: I offer in evidence the proceedings of the meeting of the Directors of the Amalgamated Copper Company under date of December 21st, 1899, appearing on page 29 of the Book of Minutes, as follows: "It was voted that the Amalgamated Copper Company purchase 10,000 shares of the Boston and Montana Consolidated Copper and Silver Mining Company for the sum of two million, thirty-seven thousand, five hundred and twenty-eight dollars and eighty-six hundredths (\$2,037,528.86). It was voted that this Company purchase 54,000 shares of the Anaconda Copper Mining Company for the sum of two million, eight hundred and twenty-six thousand, four

hundred and forty-five dollars and eighty-two hundredths (\$2,826,445.82)."

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which said objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

The ledger does not show this. I have not got the ledger of 1900 and 1901. This is Ledger No. 2 and shows \$187,531,422.82, but I cannot give you the details, except from 1905. The first ledger I have shows an investment of about 187,000,000 odd dollars, on the last entry. That is ledger No. 2. I don't know where Ledger No. 1 is. Ledger No. 2 commences with my assumption of the office. This can be analyzed, but it will take some time to do so. My books will show the items that made up that amount since 1905, that is, will show whatever was acquired since 1905, but my books will not show what went to make up that amount, but it can all be analyzed, and all items shown as far as that is concerned, I expect. I am unable to give the items that go to make up this one hundred and eighty-seven million. The last entry in my ledger, 1913, shows this total, the very last entry, September. The amount I started off in my Book No. 2 when I took hold was January 1st, 1913, \$187,531,422.82 October 1st, 1906, \$154,330,847.18; additions, \$33,200,575.64. Those additions I could, of course, identify for you and trace out easily enough. Except as the records indicate I am unable to tell you at all what that \$154,-

000,000 consists of. The amount of investment that I started off my books with I think was \$154,000,000. That amount was transferred from Ledger No. 1, I suppose, given to me as a balance. As a matter of course I had Ledger No. 1 in my possession at one time. These entries were handed to me from a trial balance, and I have forgotten whether the auditors did it or not. I saw the book myself, but I don't know where it is now. There is no particular reason why it left the secretary's office, only there is not any more room in that safe there. I have one set of books in there now. I don't know when I last saw it, I think seven or eight years ago. I don't recollect whether I saw them since or not. I think not. That ledger was never in my possession. I cannot tell exactly how long after I took charge of the office I last saw it. It was not as long as a year or so. I didn't become answerable as secretary and treasurer for this book if I verified the accounts that were handed over to me on the trial balance, and made the transfer. The Journal and the cash book of that set have disappeared from the secretary's office that I know of. I don't know where they are. I cannot tell you what these acquisitions since I took the office amounting to \$33,000,000 or thereabouts consisted of, but I can tell you in a very short time. I cannot tell you offhand. That total of 187,000,000 represents the amount now owned by the company January 1st, 1913. These are in round figures. I have not worked out all the credits and the smaller debits. There

was \$75,000,000 to start with. That shows here in the incorporation. I think the B. and M. foots \$80,000,000; that would be \$155,000,000, that would show some credits here.

MR. GARVER: Starting off with that 154 odd million. The original purchase referred to in the records of the proceedings represents \$75,000,000. The Boston and Montana and the Butte and Boston purchases represent \$80,000,000 more. That is my recollection, making practically \$155,000,000, or as I have told you, one hundred and fifty-four million odd. There might have been some additions and some deductions, bringing this total. I have not the number of shares here in one of the companies, but it does not matter. It is very small, Butte Water Company stock, \$39,000; Butte and Boston bonds, \$180,000; then here was a purchase of 50,000 shares of the Butte Coalition Mining Company \$825,000; 154,000 shares Green Cananea Copper Company, \$1,790,000, 150,000 shares of Inspiration Consolidated Copper Company, \$3,000,000; United Metal Selling Company, \$12,348,000; Big Black Foot Timber Lands, \$2,881,748; W. A. Clark properties, Butte, Montana, \$5,000,000; Washoe Smelter, \$7,200,000; that foots a little over the total I gave you. I have given you the number of shares of the company so far. I can look up this Butte Water. Of course, there would be no shares on the Timber Lands, and there are no shares on the W. A. Clark properties. I cannot give you the total number of shares of the Green Cananea Company that are

outstanding without looking that up. I have not the total number of shares of the Anaconda here in this list. It is in the original. It shows that we purchased 620,000 shares of the Anaconda. That is when your company was a thirty-million dollar corporation. Those were \$25 shares and the company was \$30,000,000. That makes 1,200,000 shares and of that we got 620,000. Now, taking the next, the Parrot, I have got 115,719 shares. There were 229,870 issued, I think. I can get that for you in a minute,—229,850. Of the Colorado Smelting & Mining Company there were 100,000 shares, I think, of which we got 83,702. I am quite sure that subsequently we acquired more. We had all of the Washoe. The amount of that was two million. 30,464 at \$100 a share, were issued. As to the subsequent acquisitions, the Boston and Montana, I will have to refer to this (Witness refers to Minute Book.), I will read off this other Anaconda as it is purchased here. Here is 42,000 shares added to that 620,000. The date of that is September 21, 1899. The Copper hand book of 1908 gives the stock of the Boston and Montana at 150,000 shares at \$25 a share, and it says the Amalgamated owns practically all. As to the date of its acquisition of the stock of the Boston and Montana,—that is the trouble, I cannot find but ten thousand shares in here. We will start then with ten thousand shares, December 21st, 1899.

MR. WALSH: I will offer the minutes of the stockholders' meeting of June 6th, 1901 appearing at page 51 to 66 inclusive, being proceedings in

connection with the acquisition of the stock of the Boston and Montana and Butte and Boston.

To which offer the defendants then and there objected, on the ground that the same was wholly incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

(Whereupon minutes of meeting of June 6, 1901, were offered and received in evidence and marked Complainants' Exhibit "F", and are in the words and figures following to-wit:

Exhibit F.

A Special Meeting of the Stockholders of the Amalgamated Copper Company was held, pursuant to notice, at the office of the Company, No. 243 Washington St., Jersey City, New Jersey, on June 6, 1901, at 10 o'clock in the forenoon.

Mr. R. V. Lindabury called the meeting to order, and nominated Mr. W. H. Corbin as Chairman of the meeting; the nomination having been duly seconded, a vote was taken thereon; all the votes being in the affirmative except that of Mr. C. H. Venner, who voted in the negative, Mr. Corbin was thereupon declared duly elected Chairman of the meeting and took the Chair.

Upon motion duly seconded, Mr. George H. Church was elected Secretary of the meeting.

Mr. C. H. Venner then moved that the meeting adjourn to June 21st, 1901, at 10 o'clock A. M. at the same place. The Chairman informed him that he could not at that time entertain such a mo-

tion, as the preliminary business of organization of the meeting had not been completed.

The Chairman then appointed Mr. LeGrand Bouker and Mr. R. S. Jordan as Inspectors of Votes of the meeting, and those present as Stockholders or Proxies were requested to notify the Inspectors of their presence and present their proxies, if any, for the purpose of verification with the list of Stockholders entitled to vote.

The Inspectors having taken the oath for such purpose prescribed and having noted the Stockholders present in person and received the proxies of those represented by proxy, reported the number of shares represented by Shareholders present at the meeting in person or by proxy to be 591,300 shares, out of a total issue of 750,000 shares being a quorum of more than two-thirds of the Capital Stock.

At the request of the Chairman, the Secretary then read the notice of the meeting, the affidavit of Paul H. Webster as to due service of the same, and the circular letter of William G. Rockefeller, Secretary, enclosed therewith. He also submitted the proofs of the publication of the notice of meeting, in the various newspapers.

The Chairman then stated that if it was desired that any of these papers be spread upon the minutes, a motion to that effect was now in order, and, on motion duly seconded, it was voted that the notice of the meeting given by the Secretary, together with the proofs of mailing the same and the proofs

of publication, be spread upon the Minutes. They are as follows:—

**AMALGAMATED COPPER COMPANY.
NOTICE OF SPECIAL MEETING OF STOCK-
HOLDERS.**

Notice is hereby given that a special meeting of the Stockholders of the Amalgamated Copper Company will be held at the Company's office, No. 243 Washington Street, Jersey City, New Jersey, on the sixth day of June, 1901, at ten o'clock in the forenoon, to take action upon the following resolutions passed by the Board of Directors at a meeting duly held at the office of the Company in the City of New York, May 21, 1901.

"RESOLVED, that it is advisable that the Capital Stock of this Company, be increased from \$75,000,000 to \$155,000,000.

"RESOLVED, that a meeting of the stockholders of the Company be and the same is hereby called, to be held at the Company's office, in the City of Jersey City, New Jersey, on the sixth day of June, 1901, at ten o'clock in the forenoon, to take action on the above resolution.

"RESOLVED, that there be submitted to the said meeting of the stockholders the question of the advisability of acquiring the stocks of the Boston and Montana Consolidated Copper and Silver Mining Company, and of the Butte and Boston Consolidated Mining Company, either for cash or by issuing therefor full-paid stock of this Company.

"RESOLVED, that the stockholders be notified that there will be submitted at such meeting the

report of a Special Committee appointed by the Board to consider the terms of the acquisition of said stocks, together with such recommendation, if any, as the Board may make with respect thereto." May 22, 1901.

WILLIAM G. ROCKEFELLER,
Secretary.

State of New Jersey,
County of Hudson, ss.

PAUL H. WEBSTER, of full age, being duly sworn, on his oath, says:

1. That on May 23, 1901, he was a clerk in the office of the Amalgamated Copper Company, at 52 Broadway, New York City.

2. That on the said day he served a notice, a copy of which is hereto annexed, marked "exhibit A," upon each and every one of the Stockholders of the Amalgamated Copper Company, by mailing to such Stockholders, respectively, a copy of the said notice at the general post office in the City of New York enclosed in sealed envelopes, with the postage thereon pre-paid, and addressed to each of the said Stockholders at his last known post office address, as it appeared on the books of the said Company. In each of the said envelopes, in which the said notice was enclosed, there was also enclosed a circular letter, a copy of which is hereto annexed, marked "exhibit B."

3. That a copy of the said notice was also published every day, commencing on May 23, 1901, until and including the morning of June 6, 1901, in each of the following daily morning papers

published in the City of New York: Tribune, Times, Sun, Herald Journal of Commerce and Commercial.

And a copy of said notice was published every day, except Sunday, commencing on May 22, 1901, until June 5, 1901, in each of the following daily evening papers published in the City of New York: Post, Mail and Express and Commercial Advertiser;

And the said notice was also published on May 25, 1901, and June 1, 1901, in the Engineering and Mining Journal and the Financial Chronicle, Journals published in the City of New York.

4. That a copy of the said notice was, during the same period, published in each of the following daily morning papers published in the City of Boston; Journal, Herald and Globe, and in each of the following evening papers published in said City: Transcript and Advertiser.

5. That a copy of the said notice was also published during the same period on every day, except Sunday, in the Jersey City Journal; and the notice was also published in the Newark Advertiser on May 22, 23, 27, 31, and June 3 and 5.

PAUL H. WEBSTER.

Subscribed and sworn to before me this 6th day of June, 1901.

R. V. LINDABURY,

M. C. C. of N. J.

52 Broadway, New York, May 22nd, 1901.

To the Stockholders of the Amalgamated Copper Company:

Dear Sirs:—

Your attention is called to the enclosed notice of a special meeting of the Stockholders of the Amalgamated Copper Company, to be held at the Company's office in Jersey City, on June 6, 1901.

A proxy is enclosed for your signature, in case you wish to avail yourself of it. It has been made to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, stockholders in the Amalgamated Company, because they have no substantial interest in either the Butte and Boston Company or the Boston and Montana Company, and because some of the Directors and officers of the Amalgamated Company have such interest.

Yours truly,

WILLIAM G. ROCKEFELLER,

Secretary.

The Chairman then announced that the meeting was open for the transaction of the business to be brought before it.

Mr. C. H. Venner moved that the Inspectors of Election be requested to report specifically as to the number of shares of stock represented here in person, and as to the total number of shares of Stock represented by proxies, and further that they be specially requested to report the number of shares represented by the proxies sent out by William G. Rockefeller, Secretary of the Amalgamated Copper Company enclosed in his circular letter of May 22, 1901, which said proxies run in favor of James Stillman, Robert Bacon, A. R. Flower and James Jourdan, or any of them.

After Mr. Venner had spoken at considerable length in support of his motion, a vote was taken thereon, and it was declared by the Chairman to have been lost.

Mr. Venner then asked for a Stock Vote upon this motion, and stated that he doubted the vote. The Chairman, however, declared that he was too late in asking for a Stock Vote, and that the vote had been so obviously against his motion, that he could not entertain his request.

Mr. Venner then moved, as proxy for the C. H. Venner Company, that no votes be received at this meeting of the Stockholders upon proxies given to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, or any of them on the form sent out by the Secretary of the Amalgamated Copper Company, with his circular dated May 22, 1901, and addressed to the Stockholders of the Amalgamated Copper Company, on the ground that such proxies have been illegally and improperly solicited, and on the further ground that said proxies have not been properly executed by the persons whose names may be subscribed thereto.

Upon vote being taken, the Chairman declared that the motion was lost. Mr. John A. Garver then said:—At a meeting of the Board of Directors of the Amalgamated Copper Company held May 21, last, a Special Committee was appointed, consisting of Mr. Robert Bacon, Mr. F. P. Olcott and Mr. James Stillman, to consider the proposition which had been made by Messrs. Kidder, Peabody & Co. on behalf of Stockholders of the Boston and

Montana Consolidated Copper and Silver Mining Company, and the Butte and Boston Consolidated Mining Company, to sell to the Amalgamated Copper Company the majority of the shares of the Capital Stock of the Boston and Montana and the Butte and Boston Companies. That committee immediately entered upon an investigation of the subject and entered into negotiations with Messrs. Kidder, Peabody & Company, and they have requested me to submit their report made at the Directors' meeting held the 4th of this month, so that the stockholders may be informed and take such action on the Report as they deem advisable.

Mr. Garver then read the report, which, upon motion duly seconded, was ordered spread in full upon the Minutes.

The report is as follows:—

REPORT OF SPECIAL COMMITTEE.

To the Directors of the Amalgamated Copper Company:—

We, the undersigned, a Special Committee appointed at a meeting of the Board of Directors, held on May 21, 1901, for the purpose of considering an offer made by Messrs. Kidder, Peabody & Co. to sell to this Company a majority of the shares of the capital stock of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, with power to negotiate the terms of a contract to purchase the shares of the said Companies, do hereby report as follows:—

Mr. Clarence King, a well known mining engi-

neer, recently made an affidavit, in which he stated that the purchase of the properties of the Boston and Montana and Butte and Boston Companies, at a price not exceeding \$75,000,000 would be a wise and conservative act. Within a few days he made that affidavit, Mr. King, who was in ill health, started for Arizona; and although we have endeavored to reach him by telegraph, we have not yet heard from him, as he had apparently not arrived at his destination. We are informed, however, by persons who conversed with him in regard to his affidavit, that he was not asked to state whether the properties of the Boston and Montana and Butte and Boston Companies were worth more than \$75,000,000; and we understand that, in making his estimate, it was not intended by him to state that the combined values of these properties did not exceed \$75,000,000.

In order that we might be able to reach a conclusion entirely independent of the valuations heretofore made, we requested Mr. H. A. Keller, an independent mining engineer of San Francisco, of high standing, to make a special examination of the properties and report upon their value. We also requested Messrs. Ricketts & Banks, of New York, who are among the most eminent mining engineers in the country, to report upon the properties. Mr. Keller immediately visited Butte, on receipt of the telegram, and Messrs. Ricketts & Banks also had a special examination of the properties made. These reports are herewith submitted, that of Mr. Keller having been telegraphed to

us, as there was not time to obtain a written report from him.

Owing to the peculiarities in the mining laws, many questions of title to veins of ore arise among owners of adjacent claims, and it is often extremely difficult to determine the question of title. The cost of litigation over these claims is very great, owing to the fact that much underground engineering work has to be done to expose the formation of veins, and that this can be done only by the employment of expert mining engineers. The properties of the Anaconda and Parrot Companies, which are controlled by the Amalgamated Company, are adjacent in a number of places, to properties belonging to the Boston and Montana Company and the Butte and Boston Company; and the properties of these two Companies are also, in a number of places, adjacent to each other; so that conflicting claims may arise among the different Companies, at any time. The Amalgamated Copper already owns about 10,000 shares of the capital stock of the Boston and Montana Company; and as all of the Companies have become involved in very expensive litigation, it has seemed to us to be decidedly to the interest of the Stockholders of the Amalgamated Company to acquire a majority of the stock of the Boston and Montana and Butte & Boston Companies. Not only can considerable economies in the management of the properties be effected in this way, but all the Companies will thus be brought into closer alliance, having a common interest, and questions of

title, which are likely to arise from time to time among the various Companies, can be adjusted in a fair and businesslike manner, without the tremendous expense of litigation necessarily involved in settling such controversies in the courts, and which has already been such a heavy and burdensome tax upon all of the Companies.

The question of title seemed so serious to Mr. Keller, that, in his report, he has declined to distinguish between the properties of the Boston and Montana and Butte and Boston Companies, and merely reported their combined value to be at least \$80,000,000. Messrs Ricketts & Banks, while recommending that the properties, if acquired, should be purchased together, estimated that the market value of the properties of the Boston and Montana Company was worth \$65,000,000, and that of the Butte and Boston Company, \$20,000,000.

The present market value of the capital stock of the Butte and Boston Company is about \$116 per share, representing, for the entire capital stock, a market value of over \$23,000,000, and that of the Boston and Montana Company is about \$450 per share, representing, for the entire capital stock, a market value of over \$67,000,000; and the combined market value of the capital stock of both Companies is in excess of \$90,000,000.

We submit herewith a statement furnished to us by the Assistant Treasurer of the Company, with respect to the market values of the stocks of the Boston and Montana and Butte and Boston

Companies, the market price for refined copper at present as compared with recent years, the dividends paid by the Boston Companies and other facts and circumstances bearing on the value of the stocks of the two Companies.

Additional difficulty attended our negotiations with Messrs. Kidder, Peabody & Co., owing to the delay which had taken place as the result of legal proceedings in New Jersey, since they originally sent out their circular letters on April 15, and to the difficulty of securing additional time from the depositing shareholders. The most advantageous arrangement which we have been able to make with them on behalf of the Amalgamated Company, is to issue the full paid stock of this company, at the rate of five and one-third shares for one share of the Boston and Montana Company and one and one-third shares of the stock of the Butte and Boston Company. While this left them to adjust the proportions between the respective Stockholders of those Companies and themselves, it assured to this Company the stocks of those Companies at an aggregate valuation of \$80,000,000, which was within the limit of the estimates made by the experts, employed by the Committee. Moreover, for the reasons heretofore stated, we were convinced that it would be judicious for this Company to acquire a majority of the stock of either of the Boston Companies without that of the other, so as to ensure the control of both.

It has been arranged with Messrs. Kidder, Peabody & Co., as part of the purchase price, that they

should be paid a reasonable sum for their compensation, and that, in case there should be difference of opinion as to the amount of this, it should be left for arbitration to the Presidents of two Trust Companies in the City of New York, who, if unable to agree, will select a President of another Trust Company, the decision of the majority to be binding.

After considering the many facts and conditions which enter into the question, we have unanimously reached the conclusion that it would be highly advantageous to the Amalgamated Company if it acquired the shares of the Boston and Montana and Butte and Boston Companies on the terms above indicated; and if the interests of the two Boston Companies are united with those of the Amalgamated Company, an additional value will be given to the stocks of other Companies heretofore acquired and now owned by your Company; in other words, the effect of such acquisition will be to enhance the intrinsic value of the outstanding stock of your company.

All of which is respectfully submitted.

New York, June 4, 1901.

ROBERT BACON,
F. P. OLCOTT,
JAS. STILLMAN.

Mr. Venner moved that the meeting adjourn until June 21, 1901, at 10 o'clock A. M. at the same place.

The motion having been seconded and put to vote was lost.

Mr. Venner then moved that all proxies purporting to be executed by Stockholders of this Amalgamated Copper Company and now in the hands of the Inspectors of Election appointed at this meeting, running to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, and any and all votes tendered to this meeting by virtue of any such proxies, be not received on the ground that said proxies are improperly executed, if executed at all, in this that they were not stamped by the persons executing those proxies, nor was the stamp cancelled by them, nor was any authority given by any of them to any person to stamp those proxies for them, nor has the Amalgamated Copper Company any authority under its charter, or under the common law, nor has it received any authority from any Stockholder to purchase and affix the requisite revenue stamp to any of said proxies, and the act of the Amalgamated Copper Company, or any officers in its behalf in affixing those stamps, is an unauthorized act, and the purchase of any such stamps by the Amalgamated Copper Company, or any person on its behalf, is unauthorized by law and a misappropriation of funds of the Amalgamated Copper Company.

The Chairman then put the motion to vote as follows: The question is upon the motion of Mr. Venner, that all proxies presented at this meeting, running to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, or either of them, be not received by the meeting, and that any votes offered by virtue of those proxies be rejected.

The vote was largely in the negative and the motion was declared lost.

Mr. Lindabury moved the following several resolutions:—

WHEREAS, in the judgment of the Stockholders of this Company, the Capital Stock of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company are reasonably worth at least \$80,000,000, now, therefore it is

I. RESOLVED, that the Report of the Special Committee of the Directors be accepted and the recommendation therein contained be approved and the same is hereby adopted.

II. RESOLVED, that the Capital Stock of the Amalgamated Copper Company be increased from the present authorized amount thereof, to-wit, \$75,000,000, consisting of 750,000 shares, of the par value of \$100 each, to \$155,000,000, to consist of 1,550,000 shares of the par value of \$100 each.

III. RESOLVED, that the Directors of this Company be and they hereby are authorized to acquire the shares of the Capital Stock of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, by issuing in exchange therefor, the full paid capital stock of this Company, at the rate of five and one-third shares of such stock for one share of the capital stock of the Boston and Montana Company and one and one-third shares of the capital stock of the Butte and

Boston Company, such acquisition to be made, however, only in case at least a majority of the shares of the said Boston and Montana and Butte and Boston Companies can be so acquired.

These resolutions were duly seconded.

Mr. Venner objected to the consideration of the resolutions at this meeting, because of the order made by the Court of Chancery of New Jersey on June 5th, in a suit in equity brought by Calvin O. Geer and the C. H. Venner Company against the Amalgamated Copper Company. He then read the order made by Vice Chancellor Stevens; and also read and filed with the Secretary the following protest on behalf of the C. H. Venner Company:—

On behalf of the C. H. Venner Company, a stockholder of the Amalgamated Copper Co. I respectfully and earnestly protest against any action being taken at this meeting to authorize the increase of the capital stock of the said Amalgamated Copper Co. from \$75,000,000 to \$155,000,000 for the reason that such increase is unnecessary and contrary to the interests of the stockholders of said Company, in this, that it is proposed to use said increase of stock of \$80,000,000 to purchase the shares of stock of the Boston and Montana Consolidated Copper & Silver Mining Co. and the Butte & Boston Consolidated Mining Company, which under the existing circumstances and conditions affecting said stocks, ought not to be acquired by the Amalgamated Copper Co.; and for the additional reason that the stock of the Butte

and Boston Consolidated Mining Co. is not worth any such price as it is proposed the Amalgamated Copper Co. shall pay for it; and because a large proportion of the stock of said Butte and Boston Company is rumored to be owned by certain of the directors of the Amalgamated Copper Co. and their associates who are in control of the Amalgamated Copper Company, and the purchase of said shares of the Amalgamated Copper Company will, if so be for the benefit of those persons and greatly injure other stockholders of the Amalgamated Copper Company, who have no interest in stock of Butte and Boston Consolidated Mining Co. and because the proposed issue of stock in exchange for stock of the Butte and Boston Consolidated Mining Company will be illegal. And because to have an authorized and unissued amount of \$80,000,000 Capital stock in the treasury of the Company subject to issue on the order of the directors will be an element of great danger to the Stockholders.

C. H. VENNER.

The Chairman stated the motion now pending to be upon the resolutions offered by Mr. Lindabury, and asked Mr. Venner if he was objecting to considering those?

Mr. Venner said: "My protest is germane to the motion made by Mr. Lindabury. I move as an amendment, without waiving my objections to the motion moved by Mr. Lindabury, that any and all offers made to the Amalgamated Copper Company, or any of its officers or Directors, by Kid-

der, Peabody & Co. for the sale to the said Company of any shares of the Capital Stock of the Boston and Montana Consolidated Copper & Silver Mining Company, or the Butte and Boston Consolidated Mining Company, be produced and read and submitted to this meeting."

The Chairman ruled the proposed amendment to be out of order.

Mr. Garver moved as an amendment to the resolutions offered by Mr. Lindabury, the following:

"IV. That the carrying out of the foregoing Resolutions be subject to the order of the Chancellor of New Jersey, made on June 5th, 1901, under supplemental bill filed by Galvin O. Geer and another against this Company."

This amendment was accepted as a part of the original resolutions moved by Mr. Lindabury.

Mr. Lindabury moved the following:—

RESOLVED, that the polls be now opened for the purpose of taking a vote, by ballot, upon the resolutions now before the meeting.

Mr. Venner moved to amend Mr. Lindabury's motion so as to preclude the voting of any proxies given or purporting to be given by the Stockholders to James Stillman, Robert Bacon, A. R. Flower and James Jourdan.

Which amendment was put to vote and lost.

Mr. Lamb as attorney and proxy for Charlotte E. Smith objected to the adoption of the resolutions on the ground that the information furnished the Stockholders was not sufficient.

Mr. Garver then read to the meeting in full the

reports of the experts, Mr. H. A. Keller and Messrs. Ricketts & Banks, referred to in the report of the Special Committee of Directors, and they were ordered to be spread upon the Minutes. They are as follows:

June 3, 1901.

St. Paul, Minn.

James Stillman, Esq.,

Care Amalgamated Copper Company,

72 Broadway, New York.

I have examined for your committee properties of Boston and Montana and Butte and Boston, at Butte and Great Falls, without giving details, owing to the limited time I may command for examination. I have no hesitancy in reporting that in my judgment, under present conditions, the aggregate value of the properties of these two companies is reasonable at eighty Million Dollars. On this I considered a friendly adjustment between these companies of possible conflicting title to ore bodies of great value.

H. A. KELLER.

RICKETTS & BANKS

Chemists, Assayers and Mining Engineers,

104 John Street.

New York, June 3rd, 1901.

Messrs. ROBERT BACON

F. P. OLCOTT and

JAMES STILLMAN,

Committee of the Board of Directors of the Amalgamated Copper Company.

c/o Messrs. Sherman & Sterling,

44 Wall Street, New York.

Gentlemen:

In accordance with the instructions contained in a communication received from Messrs. Sherman & Sterling, under date of May 23rd, 1901, we have an examination of the properties of the Boston & Montana Consolidated Copper & Silver Mining Company and of the Butte & Boston Consolidated Mining Company, located at Butte, Montana, and have also examined the Works of the former Company, at Great Falls, Montana, for the purpose of arriving at a fair valuation of all of the same. We have had the mine workings measured and sufficiently sampled to give a clear idea of the ore reserves and have paid special attention to the continuation of the ore bodies in depth. We have not, however attempted to prepare elaborate maps and tables to annex to this report, as we assume that your principal wish is to have our estimate as to value. The Smelting Works of both of the Companies have been examined as to their capacity and facilities, for economical operation, and in the case of the works of the Butte & Boston Consolidated Mining Company we have paid special attention as to its earning capacity as a "custom" plant.

The accounts of both Companies have been examined as to value of properties, past and present production earnings and dividends. In this connection, we think it proper to state that the properties of the Companies have been carried in the books at a merely nominal value, viz.: in the case of the Boston & Montana Consolidated Cop-

per & Silver Mining Company, \$4,482,797.71, while in the case of the Butte & Boston Consolidated Mining Company, it is \$2,000,000, which, we are informed, is the amount paid for the property by the reorganization committee.

We find, owing to the peculiar situation of the large ore bodies in the eastern portion of the Pennsylvania Mine, belonging to the Boston & Montana Consolidated Mining Company, and in the "Michael Devitt" claim, belonging to the Butte & Boston Consolidated Mining Company, that there is considerable doubt as to the real ownership of these ore bodies, as between the two companies, although it is evident that they belong to one or the other. It will, in our opinion, take a great deal of time and money to determine this question of ownership. As we have, however, decided to report that for various reasons we cannot recommend that the properties of either of the Companies be acquired without the purchase of those belonging to the other at the same time, we have considered it best, as it will not make any difference in the total valuation, to assign these ore bodies to the Company to which they will in our judgment, be finally found to belong, viz.: The Butte & Boston Consolidated Mining Company, although they underlie the Pennsylvania claim of the Boston & Montana Consolidated Copper & Silver Mining Company.

Taking as a basis of valuation the earning capacity of the Companies as shown by their records up to the present time, their probable life, as

shown by the condition of the Mines at Butte, and the present value of the assets of both Companies, we have arrived at the following conclusions:—

I. That the market value of the properties of the Boston & Montana Consolidated Copper and Silver Mining Company, under present conditions, is sixty-five million (\$65,000,000.00) dollars.

II. That the market value of the properties of the Butte & Boston Consolidated Mining Company, under present conditions is twenty million (\$20,000,000) dollars.

III. We recommend that the ownership of all the properties of both of these Companies be acquired, for the reason that if taken together they would have a greater aggregate value than if considered individually and under separate control. We do not, however, for reasons already stated, recommend that the properties of either of the Companies be acquired without the purchase of those owned by the other.

Respectfully yours,
RICKETTS & BANKS. (SEAL).

June 3, 1901.

Messrs. ROBERT BACON,
F. P. OLCOTT,
JAMES STILLMAN,

Special Committee.

Gentlemen:—

In accordance with your request, I beg to submit the following facts in reference to the market values of the Capital Stocks of the Boston and Montana Consolidated Copper and Silver Mining

Company and the Butte & Boston Consolidated Mining Company:—

These stocks have for several years been listed on the Boston Stock Exchange, and have been dealt in continuously there and also in the New York market. I am informed that the stock of both of the Boston Companies is very widely held, there being about 800 different holders of the Stock of the Butte and Boston Company (which consists of 200,000 shares of the par value of \$10 each) and nearly 3,000 different holders of the stock of the Boston and Montana Company (which consists of 150,000 shares of the par value of \$25 each.) The present market value of the Capital Stock of the Butte & Boston Company is about \$116 par value, and that of the Boston and Montana Company is about \$450 per share. There is reason for believing that this represents the reasonable value of the properties, because the Stock is highly held for investment purposes, a great deal of it being in the name of Trustees and other persons acting in a fiduciary capacity; and if the market value is fictitious or unreasonably high, it is reasonable to assume that the conservative holders of the stock would dispose of it.

The present market price of the Stocks of these Companies, considering the great advance which has taken place in nearly all stocks dealt in on the New York and Boston Exchanges during the past year, is less than it was in 1899, as compared with the prices prevailing at that time and now for the great majority of first class securities. More-

over, since then the price of copper has very considerably advanced and is higher today than it has been for many years; the market price for the present year having been about 17 cents per pound for refined copper as against about 16 1-5 cents per pound in 1900, and 15½ cents per pound in 1899; while, prior to 1899, the price fluctuated for many years between 9½ and 11½ cents per pound. The demand for copper and its largely increased use in recent years, together with the fact that the sources of supply have not been to any considerable extent increased, have caused, and are likely to maintain, the present high price of copper. Constant improvements are being made in the methods of extracting and treating the ores, and the cost of production will be further reduced as additional improvements are made.

The Boston and Montana Company has paid out in dividends, since 1888, \$22,475,000. Last year, the total paid in dividends was \$43 per share, representing 172% upon the par value of its stock, which is \$25 per share; and over \$500,000 additional was carried to surplus account. In 1899, the dividends amounted to \$36 per share, or 144%. We are informed that the net earnings during the present year, have been at least equal to those of the preceding year.

The present Butte and Boston Company acquired the mines of a former company having a similar name, in 1897. The stock of the present Company, consisting of \$2,000,000 par value, was issued to the Stockholders of the old Company, who

were assessed \$10 per share, representing the present capital of \$2,000,000. In addition to this, the present Company assumed the indebtedness of the former company, amounting to \$1,500,000. It has constructed a new ~~smelting plant~~ and acquired some additional properties, and, at the end of 1900, it declared a dividend of \$1,000,000, or 50% out of its net profits, having also paid off a floating debt contracted prior to 1900, of about \$240,000.

Yours very truly,

P. J. McINTOSH.

The motion of Mr. Lindabury that the polls be opened for the purpose of receiving a vote by ballot upon the resolutions before the meeting was then put to a vote and carried.

Mr. Venner renewed his protest against receiving any votes upon the proxies to James Stillman, Robert Bacon, A. R. Flower and James Jourdan. Calvin O. Geer made a similar protest as also did Mr. Lamb as attorney for Carlotta E. Smith.

After all the Stockholders present in person or by proxy, had been given an opportunity to vote, and all who offered to do so had voted the Chairman having inquired if any other Stockholders desired to vote, and receiving no replies, announced that a motion to close the polls would be in order.

On Motion duly seconded, it was unanimously RESOLVED, that the polls be closed, and that the Inspectors announce the result of the vote.

Upon completing the count, the Inspectors submitted their report of the vote, showing that Share-

Anaconda Copper Mining Co. et al. 539

holders owning 595,530 shares of Stock, being more than two-thirds in interest of all the Stockholders of the Company, had voted in favor of the resolutions, and that Shareholders owning 304 shares had voted in opposition to resolutions I, II, & III, and that Shareholders owning 100 shares thereof had voted against resolution IV.

The Chairman thereupon declared all the said resolutions adopted.

It was moved and seconded that the report of the Inspectors be approved and spread upon the Minutes in full, which motion, after objection by Mr. Venner, was carried.

Following is a copy of the Inspectors' report, with their oaths attached:

AMALGAMATED COPPER COMPANY.

INSPECTORS' OR TELLERS' OATH.

State of New Jersey,

County of Hudson.

We, the undersigned, inspectors or tellers of Stockholders' votes, duly appointed to act at a special meeting of the Stockholders of the Amalgamated Copper Company, held at the office of said Company, No, 243 Washington Street, Jersey City, New Jersey, on the sixth day of June, 1901, at 10 o'clock in the forenoon, being severally duly sworn, do depose and say, and each for himself deposes and says: that he will faithfully execute the duties of inspector or teller at such meeting with strict impartiality, in accordance with the best of his ability.

Severally sworn to before me this sixth day of June, 1901.

ROBERT S. JORDAN,
LE GRAND BOUKER.
R. V. LINDABURY,

M. C. C. of N. J.

AMALGAMATED COPPER COMPANY.

INSPECTORS' OR TELLERS' CERTIFICATE.

We, the undersigned, appointed Inspectors or Tellers of Stockholders' votes at and for a special meeting of the Stockholders of the Amalgamated Copper Company, held at the office of the company, No. 243 Washington Street, Jersey City, New Jersey, on the 6th day of June, 1901, at 10 o'clock in the forenoon,

HEREBY CERTIFY AS FOLLOWS:—

I. That before entering upon the discharge of our duties, we subscribed the oath of office, which is hereto annexed.

II. That the following resolutions having been proposed and seconded, were submitted to a stock vote at such meeting.

WHEREAS, in the judgment of the Stockholders of this Company, the Capital Stocks of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company are reasonably worth at least \$80,000,000, now therefore, it is

I. RESOLVED, that the report of the Special Committee of the Directors be accepted and the recommendation therein contained be and the same is hereby adopted.

II. RESOLVED, that the Capital Stock of the Amalgamated Copper Company be increased from the present authorized amount thereof, to wit, \$75,000,000, consisting of 750,000 shares of the par value of \$100 each, to \$155,000,000 to consist of 1,550,000 shares, of the par value of \$100 each.

III. RESOLVED, that the Directors of this Company be and they are hereby authorized to acquire the shares of the Capital Stock of the Boston and Montana Consolidated Copper and Silver Mining Company, and the Butte and Boston Consolidated Mining Company, by issuing in exchange therefor, the full paid Capital Stock of this Company, at the rate of five and one-third shares of such stock for one share of the Capital Stock of the Boston and Montana Company and one and one-third shares of the Capital Stock of the Butte and Boston Company; such acquisition to be made, however, only in case at least a majority of the shares of the said Boston and Montana and Butte and Boston Companies can be so acquired.

IV. That the carrying out of the foregoing resolutions be subject to the order of the Chancellor of New Jersey, made on June 5th, 1901, under supplemental bill filed by Calvin O. Geer and another against this Company.

V. That the holders of 595,530 shares of stock of said Amalgamated Copper Company in person or by proxy, cast their votes at said meeting in favor of the adoption of resolutions 1, 2, 3, and

4; that only 304 shares thereof were cast against the adoption of said resolutions 1, 2 and 3; and that only 100 shares thereof were cast against the adoption of resolution # 4, and that we reported the said result of said vote to said meeting; and that the said resolutions were thereupon declared to be adopted.

IN WITNESS WHEREOF, we have made and signed this certificate, the 6th day of June, 1901.

ROBERT S. JORDAN,

LE GRAND BOUKER.

State of New Jersey,

County of Hudson, ss.

BE IT REMEMBERED, that on this sixth day of June, in the year of 1901, before me, the subscriber, personally appeared Robert S. Jordan and LeGrand Bouker, who I am satisfied are the persons named in and who executed the foregoing certificate. and I having first made known to them the contents thereof, they did thereupon severally acknowledge that they signed the same as their voluntary act and deed for the uses and purposes therein expressed.

CHARLES L. CORBIN,

Master in Chancery of New Jersey.

ON Motion, duly seconded, it was

RESOLVED, that when this meeting adjourns it do adjourn to meet at the same place, on Tuesday, the 11th day of June, at 10 o'clock in the forenoon.

On motion, duly seconded, the meeting then adjourned.

W. H. CORBIN, Chairman.

GEORGE H. CHURCH, Secretary.

MR. WALSH: Here is the memorandum of the acquisition of the forty-two thousand shares of Anaconda stock. I offer in evidence the minutes of the meeting of date September 21st, 1899, appearing at pages 27 and 28 of the record.

To which offer of the complainants, the defendants then and there objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

(Whereupon minutes of meeting of September 21, 1899, were offered and received in evidence and marked Complainants' Exhibit "G").

MR. WALSH: And also the minutes of the meeting of June 22nd, 1899, appearing at page 26, authorizing the President to purchase properties adjacent to those owned by the company.

To which offer the defendants then and there objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants excepted.

(Whereupon minutes of meeting of June 22, 1899, were offered and received in evidence and marked Complainants' Exhibit "H").

Said Exhibits "G" and "H" are in words and figures following, to-wit:—

Exhibit G.

A meeting of the Board of Directors of the Amalgamated Copper Company, was held at the New York office of the Company, No. 52 Broad-

way, New York, at 3 o'clock P. M., Thursday, September 21st, 1899, a quorum being present.

The minutes of the last meeting of the Board of Directors, held on June 22nd, 1899, were read and approved.

The minutes and votes of a meeting of the Executive Committee, held August 24th, 1899, were read, ratified and confirmed, and are as follows:—

“New York, August 24, 1899.

A meeting of the Executive Committee of the Amalgamated Copper Company, was held at two o'clock this day at the office of Mr. William Rockefeller, 26 Broadway, New York, a quorum being present.

IT WAS VOTED that the Treasurer be authorized to purchase at par, twenty-five (25) or such less number as he deems proper, of the one thousand dollar bonds of the Herald Publishing Company, publishing the Helena Herald, Helena, Montana.

IT WAS VOTED that in case a new hotel is built upon the property now owned by the Amalgamated Copper Company, and occupied by Marcus Daly and Company, as a bank, that the Amalgamated Copper Company, will take in stock of such new hotel, an amount equal to a fair valuation of this real estate which it will sell to the Hotel Company.

IT WAS VOTED that it is expedient to at once take up the question of building a refinery for the Amalgamated Copper Company, and the Vice-

President and Treasurer be authorized and instructed to procure forthwith all possible data for the erection of a new refinery in the vicinity of Buffalo or Chicago, wherever a large amount of water power can be economically purchased.

IT WAS VOTED that the economical administration of the Amalgamated Copper Company requires that so far as possible the number of companies, all of whose stock is owned by the Amalgamated Copper Company, should be reduced and therefore the President is authorized to forthwith take such action as he deems necessary for consolidating the various companies into one or more corporations.

IT WAS VOTED that the President of the Amalgamated Copper Company, be requested to see that so far as possible, all the funds held in New York by the various companies in which the Amalgamated Copper Company is interested, be deposited in the National City Bank of New York.

The meeting adjourned subject to the call of the Vice-President.

WM. G. ROCKEFELLER,

Secretary."

IT WAS VOTED to dispense with, at this meeting, the reading of the minutes of the meetings held April 27th, and the Secretary was instructed to send to each Director a copy of the minutes, in order that they might be examined at leisure and action taken on them at a future meeting.

Messrs. Daly and Burrage explained the steps

that were being taken in consolidating the various smaller companies.

IT WAS VOTED to amend Article 23 in the By-Laws of the Company, by adding thereto the following words:—

“Dividends shall be declared on the third Thursday or the next business day thereafter, of September, December, March and June, and paid on the third Monday or the next business day thereafter, of October, January, April and July.”

IT WAS VOTED that the sum of Fifty Thousand Dollars (\$50,000) is hereby set aside out of the net profits of the Company, as a Reserve Fund.

IT WAS VOTED that a quarterly dividend of \$1.50 per share, and also an extra dividend of 50 cents per share, be paid on Monday, October 16th, 1899, to the stockholders of record at twelve o'clock noon, Monday, October 2nd, 1899, and that the transfer books be closed from twelve o'clock noon, October 2nd, until ten o'clock A. M. Tuesday, October 17th, 1899.

IT WAS VOTED that the Treasurer be authorized to sell to D. J. Hennessy, for the sum of Three Hundred Thousand Dollars (\$300,000) cash twenty per cent (20%) of the Capital stock of the Hennessy Mercantile Company.

IT WAS VOTED that the Treasurer be authorized to purchase forty-two thousand (42,000) shares of the Capital Stock of the Anaconda Copper Mining Company, and also such additional shares from time to time as the Executive Com-

mittee may direct, at such prices as they approve.

The meeting adjourned subject to the call of the President.

WM. G. ROCKEFELLER,

Secretary.

Exhibit H.

A meeting of the Board of Directors of the Amalgamated Copper Company was held at the office of Mr. Wm. Rockefeller, 26 Broadway, New York, at 2:30 P. M. Thursday, June 22nd, 1899, a quorum being present.

The minutes of the last meeting of the Board of Directors, held on May 22nd, 1899, were read and approved.

IT WAS VOTED to dispense with, at this meeting, the reading of the minutes of the meeting held April 27th, and to have them read instead at some future meeting.

IT WAS VOTED that the Treasurer be authorized to borrow money from time to time, as approved by the Executive Committee.

IT WAS VOTED that the President be authorized to purchase from time to time, subject to the approval of the Executive Committee, any properties adjacent to ones owned by the Company.

IT WAS VOTED that the President be empowered to employ such consulting engineers as he may deem necessary.

IT WAS VOTED that the question of salaries be referred to the Executive Committee with power.

The President Mr. Marcus Daly, then read a re-

port giving full details of the present condition of the Company, and its estimated earning ability.

The meeting adjourned subject to the call of the President.

WM. G. ROCKEFELLER,

Secretary.

The first that I have here of these companies in which we did acquire stock is the United Metal Selling, and we had all of that. The next is the Inspiration, 150,000. The properties of the Inspiration Company are near Globe, Arizona. The outstanding total is 722,945 shares at twenty dollars each. This is the old Green. I think it has been changed. The capital stock was two million five hundred shares. No, I would not say that it has been reduced to two million; two million five hundred shares at twenty dollars a share, increased to \$100.00 par. That would cut that down to five hundred thousand shares. I know this: Instead of 154,000 shares, we now have 30,800; that is to say we bought 154,000 shares, but has been reduced on a basis of one to five. The par value of the capital stock must have been increased, so that our present holdings are 30,800 shares, on the same capitalization. 500,000 shares at \$100 a share. The next is the Butte Coalition. That was paid for in this period, and that has been wiped out, but during its life we bought fifty thousand shares for \$825,000. That has been dissolved, you know, but it was a charge in the period. When I mentioned the Butte Consolidated I intended to say Butte Coalition Mining

Company. We have no Butte Consolidated Company. I meant Butte Coalition. The next item is B. & B. bonds, 180,000. I don't think that was the total issue. This was just a purchase afterwards. If they had any bond issue at all, it would be more than \$180,000. The next is the Butte Water Company, \$39,000. That represents 2061 out of the total of 40,000. The rest was for Big Blackfoot Timber Lands, 2,881,748, and the Washoe Smelter and the Clark properties. The Greene Cananea is engaged in copper mining too. When the properties of these various companies were transferred to the Anaconda Copper Mining Company about 1910, I think the Amalgamated obtained stock in the Anaconda Company for the stock that is held in these various companies. I also think for its stock in the Butte Coalition Company it received in exchange Anaconda Copper Mining Company stock, the stock of the Anaconda Mining Company meanwhile having been increased from 30,000,000 to 150,000,000. I don't know to whom the title to the Black Foot lands went. I cannot tell you that. I don't know whether it went to the Amalgamated Copper Company. The title is in the Big Blackfoot Milling Company, and we have the stock of that company exchanged for Anaconda stock; we have Anaconda stock exchanged for that stock. The Big Black Foot Milling Company went out of existence likewise. The way it was finally settled was that these lands were really purchased with Anaconda Copper Company stock, that is to say, stock of the Ana-

conda Copper Mining Company was issued for these lands, and the Amalgamated became the owner of that additional Anaconda stock. The title to the Clark properties passed to the Anaconda Copper Mining Company and then the Amalgamated got Anaconda stock for it. The total Amalgamated capitalization was 155,000,000, not all issued. 153,887,900 had been issued, and the excess above that amount and between that amount and the total investment of 184,000,000, represents accumulations from time to time. There is no extra stock issued for that difference. Turning to the record for the 1905 with reference to the adjustment of the Heinze litigation or the acquisition of the Heinze properties, it is only referred to in the report of stockholders. That is all so far. It was a circular that was sent to stockholders; that is just a copy in here, appearing in the minutes of the annual stockholders' meeting. I think I have a printed copy of that circular. I think I can get one for each year. This is the report you refer to. This was a pamphlet that was issued for two or three years. I will get all of them from 1905. It will take some time to get them. The first reference I find to it is under this date of June 5, 1905, that is, to the subject inquired about. I do not think it speaks of Heinze at all; it just says "litigation." I will provide you with a copy of the report which is copied at length in this record if I can find it. Here it is in the meeting of February 15, 1905.

MR. WALSH: I offer the proceedings of the

Board of Directors of date February 5, 1906, appearing at pages 130 to 135 inclusive.

To which offer in evidence of said proceedings, the defendants then and there objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants excepted.

(Whereupon proceedings of Board of Directors of February 5, 1906, offered and received in evidence and marked Complainants' Exhibit "I," and is in the words and figures following, to-wit:)

Exhibit I.

A meeting of the Board of Directors of the Amalgamated Copper Company was held pursuant to due notice at the office of the Company, No. 42 Broadway, New York, on Thursday, February 15th, 1906, at which a quorum was present.

IT WAS RESOLVED: to dispense at this meeting with the reading of the minutes of the last meeting of the Board of Directors held on Thursday, January 18th, 1906.

A letter addressed to the Board of Directors of The Company, from Mr. T. F. Cole, was read to the Board as follows:

New York, February 15th, 1906.

To the Board of Directors of the Amalgamated Copper Company.

Gentlemen:—

The following named corporations:

Montana Ore Purchasing Company,

Minnie Healy Mining Company,

Nipper Consolidated Copper Company,
Belmont Mining Company.

Corra Rock Island Mining Company,

Hypoeka Mining Company.

Guardian Copper Company,

Johnstown Mining Company,

have also assigned to me claims and choses in action against your company by instruments of assignment in the form of the paper hereto attached marked Exhibit B.

John MacGinniss has also assigned claims by an instrument in the form of Exhibit C hereto attached.

Believing that you will recognize the importance and desirability of settling, compromising and disposing of matters in controversy between your company and my assignors, I make you the following proposition:

If you will give a release and discharge of all claims and demands and all suits, actions and other legal proceedings thereon, now made or which might be made by you or in your behalf and a release and discharge from all persons representing or acting in behalf of your company in the assertion of claims and demands against any and all of the corporations and natural persons above named, on account of any trespasses or wrongs committed against your company or upon its properties by the corporations and natural persons above named, and all other claims and demands against said corporations and persons of every kind and character, excepting those aris-

ing out of the sale of goods, wares and merchandise, which your company has or might assert against any of the said corporations, their officers and agents and the natural persons above named, and also from any claim or demand now being asserted in any action or legal proceeding pending anywhere in any Court, State or Federal or which might be hereafter asserted because of any bond or undertaking given in favor of your corporations by or in behalf of any of the corporations above named, or by or in behalf of any of the natural persons above named, I will release and discharge you from any and all liabilities to any and all of the corporations and natural persons above named and to myself as assignee from and of every claim, and demand described in the instruments of assignment aforesaid.

(Signed) T. F. COLE.

Mr. A. J. Shores, counsel of the Company was present at the meeting and read to the meeting, the following letter signed by himself:

February 15, 1906.

To the Board of Directors of the Amalgamated Copper Company.

Gentlemen:—

At your request I have read the proposition today submitted to the Board by Mr. T. F. Cole of Duluth, Minn., wherein he undertakes to release and discharge the Amalgamated Copper Company from claims and demands asserted or which might be asserted by the Montana Ore Purchasing Company and other corporations and persons

named against the company, if the Amalgamated Copper Company will release such corporations and persons from claims and demands such as he specified.

The Amalgamated Copper Company has no litigation pending in the State of Montana except certain suits wherein shareholders of the Parrot Silver and Copper Mining Company and of the Boston & Montana Consolidated Copper and Silver Mining Company seek to prevent payment of dividends to the Amalgamated Copper Company upon stock held by it in those companies and to prevent the Amalgamated Copper Company from exercising any right as such shareholder.

The legal issues involved in these suits have been decided in favor of the Amalgamated Copper Company but the suits are still pending and it is of course, to have them stricken from the calendar and finally disposed of.

The acceptance of the proposition of Mr. Cole means simply that the Amalgamated Copper Company will waive any claim to costs or damages which it might assert on account of the institution of these suits.

The purchase by Mr. Cole of the properties of the several Heinze companies and his effort to procure a settlement and adjustment of controversies between those companies and the subsidiary companies of the Amalgamated Copper Company cannot, I think be otherwise than extremely beneficial to the Amalgamated Copper Company itself. After examining the proceedings

of the various corporations which have resulted in the assignment to Mr. Cole of claims and demands against the Amalgamated Copper Company and its subsidiary companies, and being satisfied that he is in a position legally to discharge all such claims as he refers to in his written proposition, I believe with other attorneys for the company with whom I have consulted, that his proposition ought to be accepted.

Mr. Cole has also arranged for a dismissal of other shareholders suits pending or which have at some time been brought against the Amalgamated Copper Company in the Heinze interests in Massachusetts, New York and elsewhere on condition that the Amalgamated Copper Company consents to the dismissal of such actions. Whenever Mr. Cole shall find himself able to procure dismissal of such suits I think that the Amalgamated Copper Company should consent to a dismissal of the same and waive any claims for costs or damages from the institution of the same.

Respectfully submitted,

(Sg) A. J. SHORES."

The following preambles and resolutions were offered by Mr. Church and seconded by Mr. Judson and were unanimously adopted:

WHEREAS, this Board is advised by counsel that the following named corporations and persons, to-wit:

Montana Ore Purchasing Company,
Minnie Healy Mining Company,
Nipper Consolidated Copper Company.

Corra Rock Island Mining Company,
Belmont Mining Company,
Guardian Copper Company,
Johnstown Mining Company,
F. Augustus Heinze,
Otto C. Heinze,
Arthur P. Heinze,
John MacGinniss,
Stanley Gifford,
Max H. Schultze,

have made lawful and valid assignments to T. F. Cole of the claims, demands and choses in action referred to in the proposition of the said T. F. Cole herein mentioned, and

WHEREAS, T. F. Cole has submitted to the Board, a proposition in writing to compromise and release the claims so assigned to him in consideration of the release and discharge by this Company of such claims against his assignors as described in his written proposition now on file with the Secretary of this Company, and

WHEREAS, the Board has duly considered the advisability of accepting such proposition after consultation with the attorneys and engineers of the company and others having knowledge of the conditions,

NOW THEREFORE BE IT RESOLVED: that the proposition of T. F. Cole be accepted, and the President or Vice-President and other proper officers and attorneys of the company are directed to take all steps necessary to effect a settlement of all matters in controversy referred to

in the proposition of T. F. Cole including the execution of all necessary or proper instruments of release and discharge and the execution of all instruments necessary to the dismissal of suits, as follows:

EXHIBIT A.

KNOW ALL MEN BY THESE PRESENTS: that the Belmont Mining Company, a corporation organized under the laws of the State of Montana, in consideration of the sum of One (\$1.00) Dollar and other valuable consideration to it in hand paid, does hereby sell, assign, transfer and set over unto his heirs and assigns, all claims and demands now made or which might be made or claimed by this corporation, the Belmont Mining Company, against any or all of the following named corporations, to-wit:

Boston and Montana Consolidated Copper and Silver Mining Company,

Butte and Boston Consolidated Mining Company,

Anaconda Copper Mining Company,

Parrot Silver and Copper Company.

Washoe Copper Company,

Trenton Mining and Development Company,

Amalgamated Copper Company,

and all claims and demands which this corporation makes or might make against any and all other persons and corporations, whatsoever, on account of any trespasses or wrongs heretofore committed or claimed to have been committed to or upon any of the real or personal properties

of this corporation, and also all claims and demands of every kind, character and description, existing in favor of this corporation against any of the said other corporations above named, their predecessors in title or persons representing them in such litigation, excepting such claims and demands arising out of the sales of goods, wares and merchandise; also all and every claim and demand now being asserted by this corporation or in its behalf, in any action or legal proceeding pending anywhere in any court against any of such corporations above named, as well as their predecessors in title and persons representing them in such litigation, and any claim or demand which might hereafter be asserted because of any bond or undertaking given by or in behalf of any one of the said corporations above named or their predecessors in title or persons representing them in such litigation.

All such claims and demands in litigation are hereby assigned, transferred and set over by this corporation and are warranted and represented to be free from any lien or claim in behalf of any attorneys or others, and this corporation agrees to consent at any time when requested, to such substitution of parties and attorneys in such litigation as the said purchaser, his heirs or assigns may request, and as he or his said heirs or assigns may be entitled to by virtue of this settlement.

This corporation represents that it has not previously assigned or transferred to any other person or corporation any claims or demands against

any of the corporations herein especially named and it promises and agrees to protect, indemnify and save harmless each of the above named corporations, from all claims and demands of the character herein specified which may at any time be made by any person or corporation as assignee of this corporation upon any assignment heretofore made.

IN TESTIMONY WHEREOF, the said Belmont Mining Company has caused these presents to be duly executed by its officers, this day
of 1906.

BELMONT MINING COMPANY,

By

President.

Attest:

Secretary.

EXHIBIT B.

KNOW ALL MEN BY THESE PRESENTS:
that F. Aug. Heinze, of the City of Butte, State of Montana, and Arthur P. Heinze, Otto C. Heinze, Stanley Gifford and Max H. Schultze, all of the City of New York, State of New York, in consideration of the sum of One (\$1.00) Dollar and other valuable consideration, to them in hand paid, do hereby sell, assign, transfer and set over unto
his heirs, and assigns, all
claims and demands now made or which might be made or claimed by them or either or any of them against any or all of the following named corporations, to-wit:

Boston and Montana Consolidated Copper and Silver Mining Company,

Butte and Boston Consolidated Mining Company,

Anaconda Copper Mining Company,

Parrot Silver and Copper Company,

Washoe Copper Company,

Trenton Mining and Development Company,

Amalgamated Copper Company,

and all claims and demands which they or any or either of them make or might make against any and all other persons and corporations whatsoever, on account of any trespasses or wrongs heretofore committed or claimed to have been committed to or upon any of the real or personal property of them or any of them; also every claim and demand now being asserted by them or any or either of them, or in their behalf, or in behalf of any or either of them, in any action or legal proceeding pending anywhere in any court against any of such corporations above named, as well as their predecessors in title and persons representing them in such litigation, and any claim or demand which might hereafter be asserted because of any bond or undertaking given by or in behalf of any one of the corporations above named, or their predecessors in title or persons representing them in such litigation.

IN WITNESS WHEREOF, the said F. Aug. Heinze, Arthur P. Heinze, Otto C. Heinze, Stanley Gifford and Max H. Schultze have hereunto set their hands and seals this day of January, 1906.

.....(SEAL)

.....(SEAL)

.....(SEAL)

.....(SEAL)

.....(SEAL)

EXHIBIT C.

KNOW ALL MEN BY THESE PRESENTS:
that John MacGinniss of the City of Butte, State of Montana, in consideration of the sum of One (\$1.00) Dollar and other valuable consideration to him in hand paid, the receipt whereof is hereby acknowledged, sells, assigns, transfers and sets over and does hereby sell, assign, transfer and set over unto THOMAS F. COLE of the City of Duluth, and State of Minnesota, his heirs and assigns, all claims, demands, cause or causes of action, and rights of action, whether now the subject of litigation or not, which he and all persons representing him in the assertion of such claims, has, has had or might have or assert against any or either or all of the following named corporations, to-wit:

Boston and Montana Consolidated Copper and Silver Mining Company,

Butte and Boston Consolidated Mining Company,

Anaconda Copper Mining Company,

Parrot Silver and Copper Company,

Washoe Copper Company,

Trenton Mining and Development Company,

Amalgamated Copper Company,

their officers and agents, on account of any tres-

passes to mining or other real property in the County of Silver Bow, State of Montana, or the Mining, removal or taking away any ores, metals or minerals thereon or therefrom or any other conversion of or tresspasses upon said lands or ores, metals or minerals, heretofore at any time done or committed by said corporations, or any or either of them, their officers or agents, and generally all claims, demands and rights of action, whether now the subject of litigation or not, on account of mining operations which he has against said corporations or any of them.

Also all claims and demands and rights of action on account of trespasses by any corporations or natural persons whatsoever upon any ore bodies or other real property now or heretofore owned by him within said County of Silver Bow and all claims for the mining, removal or taking away ores, metals or minerals therefrom or thereon whether now the subject of litigation or not.

Also all actions, suits or other legal or equitable proceedings pending anywhere in any court against said corporations or any or either of them upon the above mentioned claims or demands or any or either of them.

Also any and all claims and demands which now or hereafter might be asserted because of any bond or undertaking given by or in behalf of any one of the said corporations or their predecessors in title or persons representing them in the above mentioned suits or actions or either of them.

This instrument shall not be construed to transfer or affect any rights as a stockholder of or in the Boston and Montana Consolidated Copper and Silver Mining Company or any action or suits or other legal or equitable proceedings upon such stockholders rights.

IN WITNESS WHEREOF, the said John MacGinniss has hereunto set his hand and seal this 30th day of January, 1906.

JOHN MacGINNISS, (SEAL)

WITNESS:

SANFORD ROBINSON.

On motion the meeting then adjourned subject to the call of the president.

A. H. MELIN,

Secretary.

Litigation is spoken of in the next report, but you will get that in the report for 1906. The report I refer to now is the same as 1905 that you are going to be furnished a copy of. At the annual stockholders' meeting in 1906, a similar statement was incorporated in the record. I will furnish you with a copy of that statement. I am quite sure there will be no other reference back of it, there is no use going further, because the thing was settled at that time, you know, in 1907. I am quite sure there is no reference to the adjustment and settlement of the Heinze litigation or the acquisition of the Heinze properties except as I have already spoken of.

Q. Now, I wish you would turn to the record, if there is any record of the acquisition of the 50,-

000 shares of Butte Coalition stock. (Witness complies).

MR. WALSH: I will offer that record in evidence the record of the meeting of the Directors of the Company of date November 23rd, 1909, appearing at page 188 of the book of minutes.

To which offer, and the receipt of the same in evidence, the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling the defendants excepted.

(Whereupon record of meeting of directors of November 23, 1909, was offered and received in evidence and marked Complainants Exhibit "J," and is in the words and figures following, to-wit):

Exhibit J.

A Special Meeting of the Board of Directors of the Amalgamated Copper Company was held at the office of the Company, No. 42, Broadway, New York City, on Tuesday, November 23rd, 1909 at which a quorum was present.

The Secretary read the minutes of the regular meeting held on October 21st, 1909, which on motion duly seconded, were approved.

The following resolution was introduced by Mr. Thayer, duly seconded by Mr. Burrage:

WHEREAS the option which this Company had in 1906 to purchase a substantial block of the stock of the Butte Coalition Mining Company at cost, lapsed by reason of the inability of this Com-

pany to make the said purchase, and

WHEREAS, a large block of the said stock, consisting of 50,000 shares, has been recently offered to this Company at about \$16.50 per share as against the present market value of \$31.00 or \$32.00 per share,

RESOLVED: That this Company now purchase 50,000 shares of the capital stock of the Butte Coalition Mining Company for the sum of \$824,889.00.

It having been suggested that the vote of the Board of Directors upon the foregoing resolution should be polled, the same was accordingly done, and the following directors recorded their vote in favor of the foregoing resolution:

General James Jourdan

Mr. A. C. Burrage

" John D. Ryan

" J. Horace Harding.

" B. B. Thayer

" H. H. Rogers

" John Bushnell.

The Chairman thereupon declared such resolution duly adopted.

There being no further business before the Board, on motion duly seconded, the meeting adjourned, subject to the call of the President.

A. H. MELIN,

Secretary.

This record speaks of an option which the company had in 1906 to buy certain stock of the Butte Coalition. I don't think it was a written option.

I never saw it. I should say it was fifty thousand shares. I don't know by whom the option was given. I was secretary at the time. I cannot recall that now. You will notice that it was purchased for sixteen and a half at a time when the price was thirty-one at the time that that was exercised. I don't know from whom it was bought, but I think Mr. Rogers; I won't be sure about that. No, my books would not show. It would probably show who the check was made out to. I could very readily determine from whom this stock was bought. This system of making reports similar to these started I think in 1905. I don't know whether there was one issued in 1904 or not. There are the reports from 1905 to 1909 inclusive (handing reports to counsel). Here are the 1910, 1911 and 1912 (handing reports to counsel).

MR. WALSH: Just mark these in order.

Each of said reports being offered in evidence by the complainants, the defendants objected to their, and each of them, being received in evidence, upon the ground that the same was incompetent, irrelevant and immaterial, which said objection was overruled by the court, to which ruling of the court the defendants excepted.

(Reports dated April 30, 1905, 1906, 1907, 1908 and 1909, marked respectively Complainants' Exhibits K, L, M, N, and O, October 8th, 1913).

I think it likely was 1905 that we began making annual reports, and these have been given to the public,—to the stockholders of record. Prior

to that time, the record does not show any report made to stockholders. I do not remember of any advertisement put out by the City National Bank, or anything put out by the company at the time of its organization in relation to its stock. If I can I will get a copy of the statement filed with the Stock Exchange, whenever it was filed. My records will show, only as in these statements here the production of each one of the constituent companies of the Amalgamated from time to time. That is the only record you will find of the production in the reports, and nothing in the minutes that I remember. My books would not show the production of the Anaconda mines; not an entry. The Amalgamated Company is only a holding company. It does not keep the record of so important a matter as the production of the companies from time to time. We get information with respect to these matters that we incorporate in this annual report from the subsidiary companies. We send around to the subsidiary companies and get information just for the report purposes, showing the condition. This is a general report of conditions with the auditors' accounts attached. That is all. It goes into the price of copper, of course, and mining in a way, what they receive for their copper and silver. I have not read these for a long time, but I know that is what they do, as I recollect it, and in the report since 1905 we have incorporated the Anaconda report in with the Amalgamated, showing all of the details, operations at the mines, smel-

ters, lumber, timber, coal and so forth. That has been in all of the reports since, all details, but it is just the Anaconda report put into an Amalgamated cover since the consolidation. We have the copper hand book. As to the annual production of each of the constituent companies of the Amalgamated, from the time it was organized, the Anaconda Company would have to furnish that I should think they would have it. I don't know. The Engineering & Mining Journal is the standard work that gives the price of copper from time to time. That is the authority. Everything is settled on their figures. The Amalgamated acquired the stock of the United Metal Selling Company in March, 1911. It had for a long time prior thereto been the selling agency for the various constituent companies, but not the Amalgamated. It had been the selling agency for the subsidiary companies. I cannot tell you without looking it up where these various companies kept their supply of copper. I suppose at Perth Amboy and at Great Falls. They have a warehouse that stores all the copper that they make there in between sales; they sell most of their product; it goes west from there I understand. I think their product goes west from Great Falls. It fills the orders from the western coast. I should think that whatever stocks the other companies had on hand were ordinarily held at Perth Amboy by the Raritan Copper Works which is a subsidiary, or was, of the United Metal Selling Company, I think. It has a warehouse there. I think the books of the United Metal Sell-

ing Company would tell about that matter. I don't know anything about their books. Their office is in this building on the 9th floor. As to the amount of copper which each of the constituent companies of the Amalgamated had on hand since its organization, there is the first statement. That was what went out first for the unlisted. It was a curb stock before that time, and here is the later one (indicating). That shows just exactly what you were asking for yesterday, I think. (Producing paper).

MR. WALSH: We offer this paper in evidence. (Whereupon paper was offered and received in evidence, marked Complainants' Exhibit "P," and is in words and figures following, to-wit):

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which objection the defendants then and there excepted.

Complainants' Exhibit P.

DEPARTMENT OF UNLISTED SECURITIES.

COMMITTEE ON UNLISTED SECURITIES.

AMALGAMATED COPPER COMPANY.

Incorporated April 27, 1899, under the Laws of
the State of New Jersey.

Authorized Capital Stock, all outstanding,
\$75,000,000.

No personal liability. Par value of shares,
\$100 each.

Registrar, Central Trust Company, New York.
Transfer Agent, National City Bank, New York,

and Company's office, Jersey City.

The Company has no bonded debt. Five consecutive quarterly dividends of Two per Cent. each beginning in October, 1899, have been paid.

The Stocks of the following Companies are owned wholly (excepting organizers' shares) by this Company:

Capital Stock.

Washoe Copper Company, Butte, Mon-	
tana	\$5,000,000
Colorado Smelting & Mining Co.,	
Butte, Montana	2,500,000
Diamond Coal & Coke Co., Diamond-	
ville, Wy.	1,500,000
Big Blackfoot Milling Co., Bonner,	
Montana	700,000

A majority of the Stock of the following Companies are owned by this Company:

Capital Stock.

Anaconda Copper Mining Co., Butte,	
Mont.	\$30,000,000
Parrot Silver & Copper Co., Butte,	
Mont.	2,298,500
Hennessy Mercantile Company, Butte	
and Anaconda, Montana.....	1,500,000

This Company is a large owner of the Stock of the Boston & Montana Consolidated Copper & Silver Mining Company, located at Butte, Montana.

There is no bonded debt on any of the above named Companies.

EXTRACTS FROM CERTIFICATE OF INCORPORATION.

Third. The objects for which, and for any of which the Corporation is formed, are to do any or all of the things, herein set forth, to the same extent as natural persons might or could do, and in any part of the world, viz.:

(1.) To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging, and otherwise producing and dealing in gold, silver, copper, lead, zinc, brass, iron, steel, and in all kinds of ores, metals and minerals, and in the products and by-products thereof of every kind and description, and by whatsoever process the same can be or may hereafter be produced; and generally and without limit as to amount, to buy, sell, exchange, lease, acquire and deal in lands, mines and minerals, rights and claims, and in the above specified products, and to conduct all business appurtenant thereto.

(2.) To carry on as principals, agents, commission merchants or consignees, the business of mining, milling, concentrating, converting, smelting, treating, buying, selling, exchanging, manufacturing, and dealing in the above specified lands, properties, rights, products, and all materials used in the manufacture of each, any and all of such articles, and to carry on as such principals, agents, commission merchants or consignees, any other business which in the judgment of Company may be conveniently conducted in conjunction with any of the matters aforesaid.

(6.) To cause or allow the legal title, estate and interest in any property acquired, established or carried on by the Company to remain or be vested or registered in the name of or carried on by any other Company or Companies, foreign or domestic, formed or to be formed, and either upon trust for or as agents or nominees of this Company, or upon any other terms or conditions which the Board of Directors may consider for the benefit of this Company, and to manage the affairs or to take over and carry on the business of such Company or Companies, so formed or to be formed.

(7.) To acquire and carry on all or any part of the business or property of any Company engaged in a business similar to that authorized to be conducted by the Company, and to undertake in conjunction therewith any liabilities of any persons, firms, association or company possessed of property suitable for any of the purposes of this Company.

(8.) To purchase, subscribe for, or otherwise acquire and to hold the shares, stocks or obligations of any Company organized under the laws of this State, or of any other State, or of any territory or colony of the United States, or of any foreign country.

(12.) To carry out all or any part of the foregoing objects as principals or agents or in conjunction with any other person, firm, association or Company, and in any part of the world.

EXTRACTS FROM THE BY-LAWS.

Directors.

3. The property and business of the Corporation shall be managed by a Board of Directors, eight in number; they shall be chosen from the stockholders, and shall hold office for one year, and until others are elected and qualified in their stead.

8. The annual meeting of the stockholders, after the year 1899, shall be held on the first Monday of June in each year, at Jersey City, N. J., at 10 o'clock, A. M., when they shall elect, by a plurality vote, the aforesaid Directors to serve for one year and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote, in person or by proxy, for each share of stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

Officers.

10. At the first meeting after the election of Directors, when there shall be a quorum, the Board of Directors shall elect, by ballot, a President and Vice-President from their own number who shall hold office for one year and until their successors are elected and qualify.

Standing Committee.

16. There may be an executive committee of three Directors appointed by the Board, who shall meet when they see fit. They shall have authority to exercise all the powers of the Board at any time when the Board is not in session. The Pres-

ident shall also ex-officio be a member of the Executive Committee.

Dividends.

23. Before payment of any dividends or making of distribution of profits, there shall be set aside out of the net profits of the Company such sum or sums as the Directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for any such other purpose as the Directors shall think conducive to the interests of the Company.

Dividends shall be declared on the third Thursday, or the next business day thereafter, of September, December, March and June, and paid on the last Monday, or the next business day thereafter, of October, January, April and July.

Alterations of By-Laws.

26. The Directors may at any regular or at any special meeting alter or amend these By-Laws.

OFFICERS.—Henry H. Rogers, Vice-President; Wm. G. Rockefeller, Secretary and Treasurer; Percival J. McIntosh, Assistant Treasurer.

DIRECTORS.—Henry H. Rogers, Wm. G. Rockefeller, James Stillman, Albert C. Burrage, F. P. Olcott, Robert Bacon, A. R. Flower.

November 23, 1900.

\$75,000,000 Capital Stock admitted to quotation in the Unlisted Department this day.

H. K. POMROY, Chairman.

WM. McCLURE, Secretary

Exhibit "P" is a statement that was furnished the New York Stock Exchange at the time it was first put in the unlisted list, on the 23rd of November, 1900. No, that is not furnished for use on the curb. This is the time it went on to the New York Stock Exchange as an unlisted stock.

Exhibit "Q" is the statement furnished the Stock Exchange on March 9, 1910, when it went on the listed stock.

Exhibit "R" is the copy of the report of the Amalgamated Copper Company for 1910, which I handed you yesterday, it is for the year ending April 30, 1910.

MR. WALSH: I want to offer in evidence the report appearing in this volume at pages 3, 4 and 5. (The report appearing at pages 3, 4 and 5, is as follows: [Here insert.])

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants excepted.

At that I began accompanying the report of the Amalgamated Company with reports of the various constituent companies.

MR. WALSH: From the accompanying report of the Boston and Montana Consolidated Copper and Silver Mining Company, accompanying the report offered in evidence. I offer in evidence the following in relation to the Badger State Shaft: "This shaft had, on December 31st, 1909, reached a depth of 1548 feet, and has been sunk in the

northwestern portion of the Butte Camp, in order to develop the Badger State and Auraria claims owned by this company. The ore bodies have no connection whatsoever with those that have been developed by the shafts already mentioned, but the work thus far done, gives promise of very gratifying results. For the purpose of locating veins, a station was cut on the two hundred foot level, and another one on the thirteen hundred foot level, and cross cuts started. Veins carrying comparatively little ore, on account of their proximity to surface have been opened on the two hundred foot level, while on the thirteen hundred foot level, the same veins carrying a very good grade of ore have been encountered. Drifts have been turned upon these levels, and exploration work upon the same is in progress now."

I should say "The shafts already mentioned" mentioned in the foregoing excerpt referred to the West Colusa, the East Colusa, the Pennsylvania the Leonard No. 1 and Leonard No. 2, and Mountain View shafts. Exhibit "S" is the copy of the report for the year ending March 30, 1911, which I handed you yesterday. At that time our fiscal year ended the 30th of April, so that the report for 1910 would be for the year ending April 30, 1910.

MR. WALSH: Now I offer the report of the Amalgamated Copper Company, appearing therein at pages 5, 6, 7, 8 and 9, as follows: (Here insert said pages 5, 6, 7, 8 and 9), also the report to the shareholders of the Anaconda Copper Mining Company, appearing in the same printed book,

pages 14 and 15, as follows: (Here insert said pages 14 and 15), also the following from the report therein, concerning the Boston and Montana Department, under the head of "Badger State Shaft;":

To which offer the defendants then and there objected, for the reasons that the same was incompetent, irrelevant and immaterial; said objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

"This shaft is situated in an entirely different section of the Butte Camp from that in which are located the shafts which have been reported under the heading of the Boston and Montana Department; as it lies in a northwesterly direction from them, and distant several thousand feet. It is now eighteen hundred feet in depth, two hundred and eighty-three feet having been sunk during the year. Stations have been established at the thirteen hundred, sixteen hundred and eighteen hundred foot levels, and several veins of great promise have been developed, showing good widths, and a grade of ore higher in copper values, and carrying an average silver value, greater than that of any of the other mines. There is a general opinion among those familiar with this property, and its development, that it is destined to become one of the great mines of the district. Development work is being pushed with vigor."

Exhibit "T" is a copy of the printed report of the Amalgamated Copper Company for the year

ending April 30, 1912, which I handed you yesterday.

MR. WALSH: I offer in evidence the report of that Company, appearing therein at page 5, 6 and 7 as follows: (Here insert said pages 5, 6 and 7), also the following under the heading of Boston and Montana Department, in relation to the Badger State Shaft:

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial; objection overruled by the court, to which ruling of the court the defendants then and there excepted.

"This shaft was not sunk during the year but extensive development work was carried on, resulting most satisfactorily, and has developed the veins to a depth of eighteen hundred feet. There are but four levels in the mine, the eleven hundred, the thirteen hundred, sixteen hundred and eighteen hundred, and the greatest values shown are on the two lower levels. The shaft will be sunk an additional two hundred feet as soon as an auxiliary engine has been installed."

Complainants' exhibit "U" is a copy of the printed report of the Amalgamated Copper Company for the eight months ending December 31, 1912, which I handed you yesterday.

MR. WALSH: I offer from this, the report to the shareholders of the Amalgamated Copper Company, appearing at pages 4, 5, 6 and 7, as follows: (Here insert said pages 4, 5, 6 and 7), also the following from the accompanying report to

the shareholders of the Anaconda Copper Mining Company, under the head of "Development" at page 13:

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

"An auxiliary shaft to the Badger State Mine, known as the Emily Shaft, located on the Emily claim, which had originally been sunk to a depth of four hundred feet, was sunk an additional depth of five hundred and seventeen feet during the year, and connection made with the one thousand foot level of the Badger State mine. Development work has been done on the 1100, 1300, 1400, 1600 and 1800, foot levels, of the Badger State Mine, with very gratifying results. The mine made an average daily output of five hundred and fifty tons of ore throughout the year.

Sinking in the mainshaft below the eighteen hundred foot level was started on December 19th.

Also the following appearing on the same page, under the same heading:

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

"Many years ago, the ground adjacent to the Moose shaft, lying in a westerly direction from the Badger State Mine, was worked to a depth of five

hundred feet with fair success for ores, carrying silver values only. During the year 1913, it is proposed to start sinking the Moose shaft to a depth of eighteen hundred feet, and to prospect the veins at greater depth. This shaft can also eventually be connected with the Badger State workings, and will be of great assistance in perfecting ventilation."

Complainants' exhibit "AA" is a statement of copper on hand in East and Great Falls, and in transit on December 31, 1909. The last item shown under the head "Washoe", is mostly custom ore, that is true of all the others.

MR. WALSH: We offer this in evidence.

Exhibit "BB" is a similar statement for the six months ending June 30, 1909.

MR. WALSH: We offer this in evidence.

Exhibit "CC" is a similar statement for the six months ending December 31, 1908.

MR. WALSH: We offer this in evidence.

Exhibit "DD" is a similar statement for the six months ending June 30, 1908.

MR. WALSH: We offer this in evidence.

Exhibit "EE" is a similar statement for the six months ending December 31, 1907.

MR. WALSH: We offer this in evidence.

Exhibit "FF" is a similar statement for the six months ending June 30, 1907.

MR. WALSH: We offer this in evidence.

Exhibit "GG" is a similar statement for the six months ending December 31, 1906.

MR. WALSH: We offer this in evidence.

Exhibit "HH" is a similar statement for the six months ending June 30, 1906.

MR. WALSH: We offer this in evidence.

Exhibit "II" is a similar statement for the six months ending December 31, 1905.

MR. WALSH: We offer this in evidence.

Exhibit "JJ" is a similar statement for the six months ending June 30, 1905.

Each of the foregoing offers, namely, the offer of complainants' exhibits AA, BB, CC, DD, EE, FF, GG, HH, II and JJ, were separately objected to and their receipt in evidence objected to, by the defendants, upon the ground that they, and each of them, were incompetent, irrelevant and immaterial, which several objections were overruled by the court, to which several rulings of the court the defendant's excepted.

MR. WALSH: We offer this in evidence.

MR. GARVER: All these are objected to as irrelevant, incompetent and immaterial.

This is as far back as I have records now, when I complete it I will hand it to the Commissioner when I sign my testimony.

(Witness Excused.)

(The Exhibits referred to in the testimony of witness Melin are respectively, as follows:)

Complainants' Exhibit K.

At a meeting of the Board of Directors of the Amalgamated Copper Company in June, 1905, the Secretary was authorized to issue to the Stockholders the following statement, together with a

condensed Balance Sheet of the Company as of April 29, 1905:

The Amlagamated Copper Company was organized in April, 1899, with a Capital Stock of \$75,000,000. For three months prior thereto, copper was selling at between sixteen and seventeen cents a pound, and there was no accumulation of stocks in the hands of the producers. Scarcely any new discoveries of copper had been made in the United States for several years, and the uses of the metal were so rapidly increasing, especially in the electrical field, that the most experienced observers of the market were of the opinion, that the price of the metal would not again fall under fourteen cents a pound, until new and extensive sources of supply were developed, of which there was then no present indication. In this connection, the following statement from "The Mineral Industry" for 1899 is of interest;

"The year 1898 closed with a firm tendency at practically the highest prices of that period, but it was not until early in 1899, that consumption became manifestly larger than production, and stocks already small were drawn upon to such a degree, that an upward movement in values took place. Whatever the future may bring forth, it may be stated confidently that consumption is likely to remain satisfactory."

Mr. Marcus Daly was the first President of the Company; and it was confidently expected that it would have the benefit of his large experience and of his intimate knowledge of the copper situation

in Montana. But, unfortunately, his health became seriously impaired, preventing him from taking any active part in the management of the Company and his death occurred in the second year of the Company's existence.

During the last eight months of the year 1899 and throughout 1900, the Company was able to sell its product at over sixteen cents per pound. Dividends at the rate of one and one-half per cent, regular and one-half per cent. extra, were paid quarterly from October, 1899, to October, 1901, when the rate was made one and one-half per cent. for the quarter. In January, 1902, a dividend of one per cent. for the previous quarter was paid, and from May, 1902, to January, 1905, quarterly dividends of one-half of one per cent. were paid. In January, 1905, the dividend rate was increased to one per cent. The average rate of dividend for the total period, from October, 1899, to June, 1905, has been three and seven-eighths per cent. per annum.

In 1901, the authorized capital stock of the Company was increased to \$155,000,000, and the new stock was issued for that of the Boston & Montana and the Butte & Boston Companies. This has proved to be a very advantageous investment.

In 1901 and 1902, in order to reduce to a minimum the cost of production, a new concentrating and smelting plant was erected at Anaconda, at a cost of over \$9,000,000. This is now the most complete and up-to-date copper reduction works in existence, and has been the means of effecting

great savings in the cost of production. At these works are treated the ores of the Anaconda, Washoe, Parrot, Colorado and Butte & Bston Mining Companies. The ores of the Boston & Montana Company are treated at its own smelter in Great Falls.

The State of affairs in regard to litigation during the last few years in some of the District Courts of Montana has been deplorable. What is known as the "law of the apex," passed by Congress in 1872, gives the right, under certain conditions and within certain limits, to follow a vein from its apex into adjoining ground. This law has given rise to a vast amount of litigation, as, under it, the owner of a property adjoining a rich ^{mine} ~~vein~~, even if he has no valid claim, may assert ownership in the ore of the latter, and subject the real owner to vexatious, costly and prolonged litigation.

The Companies, controlled wholly or in part by the Amalgamated Company, have been harassed by litigation of this nature on an enormous scale and have had to contend constantly with this and other litigation to preserve their existence. The heavy expenses, incurred in this litigation, and the cost of building the new Reduction Works, opening and developing new coal mines and making settlements for damage claims, have been paid entirely out of the earnings.

Matters in Montana are now in much better condition. The Supreme Court has passed upon the legality of the Company's standing in that State

and the "Fair Trial Bill" prevents the hearing of cases by District Judges, against whom prejudice or bias can be shown.

The Company owns the entire stock of the Washoe Copper Company, the Colorado Smelting (now the Trenton Mining & Development) Company and the Big Blackfoot Milling Company, all but a few shares of the Boston & Montana and Butte & Boston Companies, and a majority interest in the Anaconda and Parrot Companies. The Big Blackfoot Milling Company owns more than one million acres of timber lands (upon which there is estimated to be over four billion feet of standing timber) and saw mills, turning out 85,000,000 feet of lumber per annum.

The Company also owns all the stock of the Diamondville Coal & Coke Company, which mines and ships 600,000 tons of coal per annum; and its mines in Wyoming are estimated by coal experts to contain an available supply of 73,500,000 tons.

The Company, through its ownership of all the Washoe Copper Company stock, holds 1,900 acres of the Bear Creek coal lands in the vicinity of Red Lodge, Montana, and also all the the coking coal property at Storrs, Montana, now under development, as well as a controlling interest in the Coke-dale Coal Company, owning coal lands and a plant which is equipped with 100 coking ovens.

The Company likewise owns a Public Sampling Works, a business block in Butte and another business block in Anaconda.

From the Anaconda Company's coal lands at

Belt, Montana, are mined and shipped 375,000 tons of coal per annum and coal experts estimate that there still remain 3,100,000 tons of available supply. The Anaconda Company also owns a hotel in Anaconda and one in Hamilton, and has a very large interest in the stock of the Butte, Anaconda, and Pacific Railroad Company, the line of which runs from Butte to Anaconda. It also owns twenty-seven thousand acres of timber lands. Its saw mills in Hamilton, Montana, turn out 30,000,000 feet of lumber annually.

The principal asset of the Company consists in the ownership, through the Companies above mentioned, of copper mines, the value of which is largely dependent upon the duration of their productiveness. The mines look as well at the present time as at any period of the Company's existence, and there are no indications, that they have not a long productive life before them.

Exclusive, however, of the said copper mines, the assets of the Company (consisting of timber lands, coal mines, reduction works, saw mills, railways, real estate, buildings, copper and cash,) controlled through the ownership of other Companies, are of very great value, exceeding in the opinion of experts, in whom the officers have entire confidence, \$50,000,000 over all liabilities of the Company.

The Company, directly or indirectly, employs in Montana 12,000 men and expends annually for wages \$14,000,000.

The Companies, owned wholly or in part by the

Amalgamated Company, produced in 1904, 252,000,000 pounds of refined copper (including only a small amount from custom ore). Of this amount, the Amalgamated Company received the benefit from 202,000,000 pounds, which is about 25 per cent. of the total production of the United States. As the outstanding capital stock of the company is \$153,887,900, each pound of copper produced is capitalized at seventy-six cents per pound, without taking into consideration any earnings from other sources than mining.

By comparison with the oldest and most conservative Copper Companies, it will be found that the Calumet & Hecla Company's stock, selling at a market valuation of about \$64,000,000, and producing annually 80,000,000 pounds of copper, has a market capitalization of eighty cents per pound of copper produced, and that the Rio Tinto Company, having a market valuation of about \$125,000,000 (including stock and bonds) and producing annually refined copper and copper in pyrites, amounting to 80,000,000 pounds, has a market capitalization of one dollar and fifty-six cents (\$1.56) per pound produced.

A fluctuation in the price, received for the product of one year between 11.70 cents and 16.50 cents per pound (the highest and lowest prices during the past five years,) means a difference to a copper company of the magnitude of the Amalgamated Company of \$9,700,000 in Annual net earnings, or over six per cent. on the capital stock.

At the present time the status of the Company

and the position of the metal market are more satisfactory than at any time since the early part of 1901.

A. H. MELIN,

Secretary.

CONDENSED BALANCE SHEET.

Of the

AMALGAMATED COPPER COMPANY.

April 29, 1905.

ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Saw-mills Standing Timber, Water Rights, Land, etc.	\$154,281,303.18
Office Furniture	2,500.00
Loan to Washoe Copper Company for Smelter Construction.....	7,350,000.00
Cash and Cash Assets.....	2,756,758.83
	<hr/>
	\$164,390,562.01

LIABILITIES.

Capital Stock, authorized issue, 1,550,000 shares of \$100 each, \$155,000,000, of which there is outstanding	\$153,887,900.00
Accounts Payable	21,070.67
Dividend No. 23, Payable May 29, 1905	1,538,879.00
SURPLUS and RE-SERVE	\$10,481,591.34

Less amount set aside for payment of Dividend No. 23, May 29th, 1905.....	1,538,879.00	
	<hr/>	8,942,712.34
		<hr/>
		\$164,390,562.01

We have examined the books and accounts of the Amalgamated Copper Company for the six years, ending April 29, 1905, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 29, 1905.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings, after making ample provision for depreciation, dismantlements, depletion of coal and timber lands, and the adjustment of copper on hand to cost.

New York, May 25, 1905.

POGSON, PELOUBET & CO.,

Auditors.

Complainants' Exhibit L.

At a meeting of the Board of Directors of the Amalgamated Copper Company, in May, 1906, the Secretary was authorized to issue to the Stockholders the following statement, together with a con-

densed Balance Sheet of the Company as of April 30, 1906;

For several years prior to the organization of the Amalgamated Copper Company, and constantly since that time, an extensive litigation has been carried on by and against the Companies, now owned wholly or in part by this Company, and by and against certain other Companies and individuals, whose interests were about four years ago acquired by the United Copper Company.

In February, 1906, negotiations were concluded whereby parties friendly to the Amalgamated Copper Company purchased from the United Copper Company a large portion of its property, including those mines and mining claims which had been the principal cause of the conflicting contentions involved in the said litigation. These were then transferred, at their actual cost, to a new and independent Company, called the Red Metal Mining Company, all the stock of which was at once acquired, also at cost, by a Holding Company, called the Butte Coalition Mining Company, which is likewise controlled by the same friendly parties.

The Minnie Healy claim, the property of the Red Metal Mining Company, has been one of the main points of contention throughout the litigation just ended; but the suit in relation thereto and all other suits involved in the foregoing litigation have now been discontinued or dismissed and an agreement has been made, providing for the selection by the respective Companies of experienced engineers whose duty it will be to recommend to

the Boards of Directors of the Companies, interested in the disputed territory, the establishment of premanent boundaries therein, which recommendations are to be finally passed upon by the said Boards.

Not only will the heavy annual expense of this prolonged litigation to the Amalgamated Copper Company and its subsidiary Companies be thus avoided, but the cessation of all hostilities will permit the working of many properties of known value, the operation of which has hitherto been restrained by injunctions.

In consideration of the assistance that the Amalgamated Copper Company has given to, and the benefits that have been derived by, the parties who have formed the other two corporations above mentioned the Amalgamated Copper Company has been given an option to purchase a substantial block of the stock of the Butte Coalition Mining Company at cost.

The valuable Tramway and Snohomish properties (in the former of which the Butte & Boston Company owns a two-third and in the latter a one-half interest, the Red Metal Mining Company owning the remainder) will now be jointly developed by these Companies. Work will also now be prosecuted on the Michael Davitt property, which is owned by the Butte & Boston Company and has been idle for several years.

The working of certain levels of the Pennsylvania mine, belonging to the Boston & Montana Company, had been practically at a standstill for

several years, owing to the injunctions which prevented an extension of the levels under certain town lots adjoining those owned by that Company. These lots having now been acquired by the Red Metal Mining Company, an arrangement will be made whereby immediate work can be resumed by both Companies.

For several years, one of the most valuable sections of the Boston & Montana property, in the neighborhood of the Leonard shaft, had been tied up by injunction. The settlement of the said litigation will now enable the Boston & Montana Company to work to its south lines in the ore bodies already partially developed.

The Nipper property, in which the Anaconda Company owns a five-thirty-sixth and the Red Metal Mining Company a thirty-one-thirty-sixth interest, will now be worked jointly by both Companies, as all litigation in respect to those interests has also ceased and the question of extra-lateral rights between the said Nipper property and the properties of the Parrot and Anaconda Companies has been settled.

During the past year, discoveries of paramount importance have been made in the Butte camp. It had long been the opinion of mining men and geologists, that the grade of the ore would diminish in value as great depths were reached. In order to test this theory, some of the shafts of the Anaconda Company were sunk several hundred feet, to a total depth of 2,400 feet. It is gratifying

to learn, that bodies of ore of a better grade than those existing on the intermediate upper levels do actually exist at this greater depth and that thus the life of the Butte camp may be regarded as indefinitely prolonged.

The concentrating and smelting works of the Washoe Copper Company at Anaconda are being operated with such success, that the cost of treating crude ore has been reduced materially during the past year and a further reduction is expected. The cost of mining has also been reduced.

At the smelting plant of the Boston & Montana Company, at Great Falls, reductions have likewise been made in the cost of treatment, and the officials report that they expect to make still greater reductions during the ensuing year.

The demand for electrolytic copper in 1905 was such, that the price rose from $15\frac{3}{8}$ cents per pound in April to $18\frac{1}{2}$ cents per pound, in December, at which latter price all the copper since produced by the mines, owned wholly or in part by the Amalgamated Copper Company, has been sold.

The Companies, owned wholly or in part by the Amalgamated Copper Company, produced in the calendar year 1905, from their own and custom ores, about 268,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 216,000,000 pounds.

The statistical position of the metal and the

present and prospective demand for its use are highly satisfactory.

A. H. MELIN,
Secretary.

CONDENSED BALANCE SHEET
of the
AMALGAMATED COPPER COMPANY.
April 30, 1906.

ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc.....	\$154,428,228.18
Loan to Washoe Copper Company for Smelter Construction.....	7,350,000.00
Cash and Cash Assets.....	4,080,448.93
	<hr/>
	\$165,858,677.11

LIABILITIES.

Capital Stock, authorized issue, 1,550,000 shares of \$100 each, \$155,000,000 of which there is outstanding	\$153,887,900.00
Accounts Payable	22,043.97
Dividend No. 27, payable May 28, 1906	2,693,038.25

SURPLUS AND RESERVE:

Balance, April 29,

Anaconda Copper Mining Co. et al. 595

1905	\$8,942,712.34	
Add Net Income for the year end- in April 30, 1906	9,161,536.80	
	<hr/>	
	\$18,104,249.14	
Deduct Dividends Nos. 24, 25, 26 and 27	8,848,554.25	
	<hr/>	
		9,255,694.89
		<hr/>
		\$165,858,677.11

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30, 1906, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 30, 1906.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings, after making ample provision for depreciation, dismantlements, depletion of coal and timber lands, and the adjustment of copper on hand to cost.

New York, May 22, 1906.

POGSON, PELOUBET & COMPANY,

Auditors.

At a meeting of the Board of Directors of the Amalgamated Copper Company in May, 1907, the Secretary was authorized to issue to its stockholders the following statement, together with a condensed Balance Sheet of the Company, as of April 30, 1907:

For the first time since the organization of the Amalgamated Copper Company, operations in the various properties controlled by it have been successfully carried on during the past year without the intervention of harrassing litigation, and consequently a large amount of development work, hitherto retarded by court injunctions, has been accomplished. In the early part of the year experienced engineers, selected by the different Companies, which had had conflicting claims against contiguous properties, in which the Amalgamated Copper Company was interested, met in Butte, and after a full examination of the local conditions, formulated a plan for the settlement of the boundary rights and also of the complicated questions relating to apex. Their conclusions were submitted to and adopted by the Boards of Directors of the various Companies controlled by the Amalgamated Copper Company.

A large working shaft upon the Tramway claim is now in process of construction, and when completed it will afford an outlet for the ores from the Tramway and Snohomish mines, the title to a portion of which is owned by the Butte & Boston Company.

A large and valuable ore territory in the Pennsylvania mine, mentioned in the Report of last year, has been developed and at present is supplying a daily output of high grade ore from the Boston & Montana and the Red Metal Mining Companies.

The development during the past year has, in confirmation of the experience of the preceding year, proved that the ore bodies in the lowest levels of the Anaconda, the Colorado, the Boston & Montana and the Butte & Boston mines are of a better grade than those existing on the intermediate upper levels.

The blast furnace, as well as the reverberatory and calcining furnaces in the smelting works of the Washoe Copper Company at Anaconda, have been enlarged, and now upwards to 10,000 tons of ore are treated daily. There is no reason to think that this tonnage cannot be maintained.

The reduction works of the Boston & Montana Company at Great Falls have been taxed to their utmost in handling the output from its mines, and work has just been started whereby the tonnage of ore which can be treated daily by these works will be increased by one thousand tons. This, however, will require the building of an entire new section in the concentrating department, a general increase of facilities in all of the other departments and the erection of a smoke stack 500 feet in height and having a diameter of 50 feet. This will be provided with the necessary flues and dust chambers for the successful and

economical handling of the ores.

A settlement of the labor question, satisfactory to both employer and employe, has been arranged and a contract in relation thereto has been signed by the officials of all the Mining Companies and the different labor unions, covering a period of five years.

The condition of the copper metal market during the past year has been highly satisfactory. The price of the metal rose from 18½ cents in December, 1906, to 25¼ cents in March, 1907. At the close of the Company's fiscal year, all the refined copper that can be produced up to the first of July next by the various Companies, controlled by this Company, has been sold in advance.

The Companies, owned wholly or in part by the Amalgamated Copper Company, produced in the calendar year 1906, from their own and custom ores about 275,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 224,000,000 pounds.

A. H. MELIN,
Secretary.

AMALGAMATED COPPER COMPANY.
BALANCE SHEET, APRIL 30, 1907.

ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Re-

fineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc	\$ 156,480,907.83
Loan to Washoe Copper Com- pany for Smelter Construction	7,350,000.00
Cash and Cash Assets.....	4,640,797.63
	<hr/>
	\$ 168,471,705.46

LIABILITIES.

Capital Stock; authorized issue, 1,550,000 shares of \$100 each, \$155,000,000 of which there is outstanding	\$153,887,900.00
Accounts Payable	22,264.80
Dividend No. 31, payable May 27, 1907,	3,077,758.00

SURPLUS AND RESERVE:

Balance, April 30, 1906	\$ 9,255,694.89
Add Net In- come for the year ending April 30, 1907	14,154,400.02
	<hr/>
	\$ 23,410,094.91
Deduct Divi- dends Nos. 28, 29, 30 and 31..	11,926,312.25
	<hr/>

11,483,782.66

\$ 168,471,705.46

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30, 1907, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 30, 1907.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings, after making ample provision for depreciation, dismantlements, depletion of coal and timber lands, and the adjustment of copper on hand to cost.

New York, May 15, 1907.

POGSON, PELOUBET & COMPANY,

Auditors.

Complainants' Exhibit N.

At a meeting of the Board of Directors of the Amalgamated Copper Company in May, 1908, the Secretary was authorized to issue to the Stockholders the following statement, together with a condensed Balance Sheet of the Company, as of April 30, 1908:

During the fiscal year of the Amalgamated Copper Company, which ended April 30, 1908, the fluctuation in the selling price of the copper metal was greater than at any other period in the history of the copper trade. At the time of the last annual statement in May, 1907, there was an

unlimited demand for the metal, the selling price at that time being in the neighborhood of 25 cents per pound. This demand was afterwards seriously affected by the severe financial depression throughout the country, and in the early summer of 1907 it suddenly slackened, and afterwards almost altogether ceased. The price of copper meantime gradually declined; and during the last two months of the fiscal year, the metal has sold at from 12 to 13 cents per pound.

The business paralysis in the United States was, however, not fully reflected abroad, and most of the copper metal, that was sold in the market (and this was a large quantity), was bought for European account, the purchasers taking advantage of the low price of the metal to replenish holdings, which had been allowed to become depleted during the former period of high prices.

Immediately after the first falling off in the demand, there was a natural tendency on the part of the producers of copper to await better business conditions; and, during this period, as but little copper was sold, a large amount was naturally accumulated.

After the price of copper had fallen considerably in the market, the officials of the various producing Companies adopted the policy of curtailing the output from their respective mines at Butte. But, after operating for a period of several months under curtailed conditions, during which time the producing cost was far in excess of the normal (owing to the fact that each Com-

pany was producing only a small part of its normal output), it was deemed advisable to confine all operations to one unit. The mines and smelter of the Boston and Montana Company at Great Falls were put in operation to their fullest extent and with satisfactory results.

In February, 1908, the surplus stock of copper had practically disappeared; and, on March 1, 1908, the mines of the different Companies and the Washoe Smelter were again put into commission and are now being operated to their full capacity.

The plans, formulated by the Engineers, mentioned in the last Report, for the settlement of boundary rights and questions of apex, have been in operation for over a year and all parties, having any interest in the matter, have been satisfied with the results.

The tramway shaft, which has been sunk jointly by the Red Metal Mining Company and the Butte and Boston Company, and through which it is expected that the ores from the Minnie Healey and the Snohomish and Tramway mines will be hoisted, has reached a depth of 1,400 feet below the surface and is now being sunk to the 1,500 foot level. Cross cuts from the lower levels of this shaft are now being driven into the contiguous territory, and the ore bodies developed have been most satisfactory.

The Washoe Smelter, at Anaconda, has been equipped with electric power, thereby greatly lessening the cost of operation, and is able to treat

10,000 tons of ore per day without difficulty.

The Boston and Montana Company has throughout the year diligently prosecuted the improvements in its Reduction Works at Great Falls. All of the grading for the flues and dust chambers has been finished; and the new stack, the top of which when completed will be 506 feet above the foundation, has been built to a height of about 50 feet.

The usual amount of development work in the different properties has been carried on throughout the year, and the results in most cases have been gratifying.

The continued occurrence of high grade ores in the lowest levels of the mines, controlled by the Amalgamated Company, and in the adjacent mines of other Companies, tends to confirm the confidence, which the Company's Engineers have always had in the future of the Butte District.

The saw mills of the Big Blackfoot Milling Company were operated to the extent required to meet the demand of the mines at Butte and the commercial trade generally. Some decrease in output was made necessary on account of the curtailment of ore production at Butte and by reason of the fact that the demand for commercial lumber fell off materially during the financial depression.

The said Company has confined its operations to the timber areas, adjacent to its original mill sites. Its largest timber holdings still remain intact. The earnings for the year were quite satis-

factory and the output of its mills is now normal.

The Belt mines, owned by the Anaconda Copper Mining Company, and the mines of the Diamond Coal & Coke Company were operated with satisfactory results, notwithstanding the fact that during a portion of the year the demand for coal greatly diminished.

Constant development work has been kept up throughout the year on the coal property, located at Bear Creek, Montana, and owned by the Washoe Copper Company and the mines, which have been opened, have been for several months producing most satisfactorily. The quality of the coal is excellent and the field is one of great promise.

The harmonious operation of the five-year labor contract, which was entered into between the employees of the different departments and the officials of the Mining Companies, has worked satisfactorily.

The Companies, owned wholly or in part by the Amalgamated Copper Company, produced in the calendar year 1907 from their own and custom ores, about 212,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 178,000,000 pounds.

A. H. MELIN,

Secretary.

AMALGAMATED COPPER COMPANY.

BALANCE SHEET, APRIL 30, 1908.

ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc.,	\$ 156,480,647.18
Loan to Washoe Copper Company for Smelter Construction	7,200,000.00
Cash and Cash Assets	3,007,830.56
	<hr/>
	\$ 166,688,477.74

LIABILITIES.

Capital Stock; authorized issue, 1,550,000 shares of \$100 each, \$155,000,000 of which there is outstanding	\$ 153,887,900.00
Accounts Payable	22,314.80
Dividend No. 35 payable May 25, 1908	769,439.50

SURPLUS AND RESERVE:

Balance, April 30, 1907	\$ 11,483,782.66
Add Net Income for the year ending April 30, 1908	6,680,556.78
	<hr/>
	\$ 18,164,339.44

Deduct Dividends Nos. 32,

33, 34, and 35 6,155,516.00

12,008,823.44

\$ 166,688,477.74

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30, 1908, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 30, 1908.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings and undivided profits, after making ample provision for depreciation, dismantlements and depletion of coal and timber lands.

New York, May 14, 1908.

POGSON, PELOUBET & COMPANY,

Auditors.

Complainants' Exhibit O.

At a meeting of the Board of Directors of the Amalgamated Copper Company in June, 1909, the Secretary was authorized to issue to the Stockholders the following statement, together with a condensed balance sheet of the Company as of April 30, 1909.

The producing Companies controlled by the

Amalgamated Copper Company, have been operated continuously throughout the fiscal year, with the exception of the Anaconda Copper Mining Company and the Boston & Montana Consolidated Copper & Silver Mining Company. The former was compelled to cease operations for a short period of time at their Washoe Reduction Works, due to the fact that the Railroad Companies were unable, on account of severe climatic conditions to transport a sufficient supply of coke; and the Reduction Works of the Boston & Montana Mining Company at Great Falls were closed from early in June until the middle of September, on account of damage by flood to the Power Plant of the Company and to the Railroads, which transport the ore.

The copper business, during the period covered by this report, has been dull and the ruling price of the metal has been low. During most of the year, the production ran in excess of consumption, but at the present time deliveries of the metal are about equal to the production. Sales have been made in the sufficient amount to practically absorb the accumulated surplus, made in the early part of the year.

All conditions in the Butte camp during the year, tending toward the successful operation of the different properties, have been quite satisfactory, and the cost per pound of copper produced has been materially lessened. The normal amount of development work has been carried on in all of the properties, and the officials of the

different producing Companies report, that this has been done with very satisfactory results and that in several of the mines, new ore bodies have been found at depth, which had never been encountered on the upper levels.

The fire in the Anaconda mine, which has been burning for a period of nineteen years, has occasioned some inconvenience from time to time, but has not interfered seriously with the operation of the property for any length of time.

A new shaft on the Belmont claim, belonging to the Anaconda Copper Mining Company, has been put in condition and equipped, and will eventually be connected with the lower levels of the Anaconda mine. This when completed will be used as an auxiliary shaft for the operation of the Anaconda Properties.

The shaft at the Parrot mine have been sunk to a depth of 2000 feet and cross cuts to the vein have been made at the 1900 and 2000 foot levels. While the vein at these depths shows ore of a concentrating grade, it is not equal to the average concentrating grade of the camp, and will not yield a profit at present prices for the Metal.

The Little Mina claim, owned by the Parrot Company, has been developed by a shaft which has now attained a depth of 1200 feet, and a shoot of ore of good grade has been developed on the 1000 foot level. Cross cuts are at present being extended toward the vein on both the 1100 and 1200 foot levels.

The shaft at the Gagnon Mine, owned by the

Trenton Mining & Development Company, is now 2300 feet deep, and the discovery of new ore bodies on the lowest levels has increased the value of this mine.

The improvements at the Reduction Works at Great Falls, consisting of a stack 506 feet in height, with flues and dust chambers, are practically completed, and will shortly be in full operation.

The sawmills of the Big Blackfoot Milling Company have been operated to a greater extent than during the previous fiscal year, owing to the fact that the mines at Butte, on account of their constant operation, have required a larger amount of timber and the commercial demand, while still far below the average, is showing a gradual improvement.

The coal mines at Belt, owned by the Anaconda Copper Mining Company, and the mines at Diamondville, owned by the Diamond Coal & Coke Company, have been operated continuously, with very satisfactory results, throughout the year.

The developments at the Bear Creek coal mines, owned by the Washoe Copper Company, have also been most satisfactory, and a grade of coal is being produced, which compares most favorably with the best Wyoming coal.

A considerable betterment has been made in the mining and reduction costs by the use of electric power. Electric pumps have been installed in the mines during the year and operated with good results and it is planned to do hereafter all

of the pumping in the mines with this power. Investigations are now being made to determine the feasibility and economy of operating all the hoisting plants of the different Companies by compressed air, generated by electric power.

The Companies, owned solely or in part by the Amalgamated Copper Company, produced for the calendar year 1908, from their own and custom ores, about 234,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 199,000,000 pounds.

A. H. MELIN,

Secretary.

AMALGAMATED COPPER COMPANY.

Balance Sheet, April 30, 1909.

ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc.	\$156,481,847.18
Loan to Washoe Copper Company for Smelter Construction	7,200,000.00
Cash and Cash Assets	3,593,102.33
	<hr/>
	\$167,274,949.51

LIABILITIES.

Capital Stock; authorized issue

Anaconda Copper Mining Co. et al. 611

1,550,000 shares of \$100 each, \$155,000,000, of which there is outstanding	\$153,887,900.00
Accounts Payable	22,564.80
Dividend No. 39, Payable May 31st, 1909	769,439.50

SURPLUS AND RESERVE.

Balance April 30th, 1908	\$12,008,823.44
Add net income for year ending April 30th, 1909.....	3,663,979.77
	<hr/>
	\$15,672,803.21
Deduct Dividends Nos. 36, 37, 38 and 39	3,077,758.00
	12,595,045.21
	<hr/>
	\$167,274,949.51

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30th, 1909, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing Balance Sheet correctly shows the financial condition of the Company on April 30th, 1909.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact, that all dividends received therefrom by the Amalgamated Copper Company have been paid out of current net earnings and undivided profits, after

making ample provision for depreciation, dismantlements and depletion of coal and timber lands.

New York, May 18th, 1909.

POGSON, PELOUBET & CO.

Auditors.

Exhibit AA.

Copper on hand in East and Great Falls and in
Transit to East December 31st, 1909.

A. C. M. Co	24,275,523
Boston & Montana	12,643,536
Butte & Boston	6,146,888
Trenton	1,952,316
Parrot	1,247,975
Washoe	22,812,554

Exhibit BB.

Copper on hand in East and Great Falls and in
Transit to East June 30th, 1909.

Anaconda Copper Mining Co.	22,139,985
Boston & Montana	23,937,003
Butte & Boston	6,560,681
Trenton	2,367,945
Parrot	1,816,159
Washoe	25,794,502

Exhibit CC.

Copper on hand in East and Great Falls and in
Transit December 31st, 1908.

Anaconda Copper Mining Co.	25,815,445
Boston & Montana	14,710,306
Butte & Boston	4,791,348
Trenton	1,814,296
Parrot	1,685,871

Anaconda Copper Mining Co. et al. 613

Washoe	19,750,704
--------------	------------

Exhibit DD.

June 30th, 1908.

Anaconda Copper Mining Co.	19,470,549
Boston & Montana	7,655,278
Butte & Boston	4,574,958
Trenton	1,472,503
Parrot	1,271,600
Washoe	18,266,809

Exhibit EE.

December 31st, 1907.

Anaconda Copper Mining Co.	23,262,604
Boston & Montana	13,054,401
Butte & Boston	5,579,975
Trenton	1,433,717
Parrot	1,869,446
Washoe	20,117,598

Exhibit FF.

June 30th, 1907.

Anaconda Copper Mining Co.	21,231,233
Boston & Montana	13,116,010
Butte & Boston	5,042,160
Trenton	1,631,058
Parrot	1,287,490
Washoe	21,251,003

Exhibit GG.

December 31st, 1906.

Anaconda Copper Mining Co.	17,387,088
Boston & Montana	11,721,690
Butte & Boston	3,824,064
Trenton	1,071,623
Parrot	1,297,080

614 *Peter Geddes et al. vs.*

Washoe	13,349,656
--------------	------------

Exhibit HH.

June 30th, 1906.

Anaconda Copper Mining Co.	30,629,411
Boston & Montana	15,493,584
Butte & Boston	3,946,097
Trenton	2,141,933
Parrot	1,895,864
Washoe	10,908,842

Exhibit II.

December 31st, 1905.

Anaconda Copper Mining Co.	24,691,785
Boston & Montana	16,971,182
Butte & Boston	4,634,753
Trenton	2,088,619
Parrot	2,284,789
Washoe	9,386,949

Exhibit JJ.

June 30th, 1905.

Anaconda Copper Mining Co.	26,020,146
Boston & Montana	19,412,570
Butte & Boston	5,213,373
Trenton	2,130,316
Parrot	1,887,023
Washoe	9,804,959

Additional Figures—Melin

Year ending June 30th, 1899. Baltimore

Anaconda Copper Mining Co.....	18,997,912 lbs.
--------------------------------	-----------------

Year ending June 30th, 1900 Baltimore

Anaconda Copper Mining Co.	51,485,088 lbs.
---------------------------------	-----------------

Year ending June 30th, 1901 Baltimore

Anaconda Copper Mining Co.....	83,942,467 lbs.
--------------------------------	-----------------

Anaconda Copper Mining Co. et al. 615

Year ending June 30th, 1902. Baltimore

Anaconda Copper Mining Co.	10,347,818 lbs.
Boston & Montana C. C. & S. M. Co.	19,270,622 "
Butte & Boston Cons. M. Co.	13,300,454 "
Parrot S. & C. Co.	2,618,465 "
Washoe C. Co.	1,357,476 "

Year ending June 30th, 1903. Baltimore

Anaconda Copper Mining Co.	27,499,695 lbs.
Boston & Montana C. C. & S. M. Co.	26,958,371 "
Butte & Boston Cons. M. Co.	4,969,691 "
Parrot S. & C. Co.	4,671,789 "
Washoe C. Co.	6,589,115 "

Year June 30th, 1904. Baltimore

Anaconda Copper Mining Co.	37,368,832
Boston & Montana C. C. & S. M. Co.	35,931,056
Butte & Boston	7,088,938
Trenton	394,166
Parrot	6,016,554
Washoe	8,202,612

December 31st, 1904. Baltimore

Anaconda Copper Mining Co.	32,622,566
Boston & Montana	21,821,769
Butte & Boston	5,889,383
Trenton	881,823
Parrot	3,345,609
Washoe	7,991,909

[Testimony of Joseph Warner Allen, for Complainants]

JOSEPH WARNER ALLEN, called as a witness in behalf of the complainants, being first duly sworn, testified in substance, as follows:

My name is Joseph Warner Allen, and I live at

Elizabeth, New Jersey. I am engaged in the copper business. I am Secretary of the Inspiration Consolidated Copper Company, the International Smelting & Refining Company and subsidiary Companies; Greene Cananea Copper Company, and subsidiary companies. I was officially connected with the Alice Gold & Silver Mining Company from 1908 until 1912, I think, until it was turned over to the Amalgamated through the purchase of that stock. While I was acting as secretary and treasurer of that Company, my office was at 42 Broadway, New York; first on the sixth floor and afterwards on the twentieth. I was also Secretary and Treasurer of the Butte Coalition Company from 1907 until the Company was dissolved in 1912. These two Companies, as far as the Secretary's office was concerned occupied the same office. I had charge of the books of the two companies at one and the same time. Generally I got my directions regarding my duties as Secretary and Treasurer from the President of the Company,—Thomas F. Cole in the Butte Coalition and John D. Ryan in the case of the Alice. The books and records of the Alice Company were turned over to the new officers of the Company at the time I resigned as Secretary and Treasurer. D. B. Hennessy is now Secretary and Treasurer of the Company; I think Ryan is still President. Mr. Hennessy has an Office in this building on the twenty-first floor. I have with me the minute book of the Alice Gold & Silver Mining Company.

MR. WALSH: We offer the record of the pro-

ceedings of the Directors' meeting held April 27th, 1910, appearing at pages 56 to 60, inclusive, transcript thereof being marked "Complainants' exhibit KK."

At this meeting the resignation of Mr. W. D. Thornton, as a Director, was accepted, and Mr. W. S. Harper was elected to fill the vacancy. Mr. Harper is associated with me in various companies, of which I am Secretary and Treasurer. He was with the Butte Coalition Mining Company; the International Smelting & Refining Company, and the Greene Consolidated Copper Company; he was Chief Accountant and Treasurer of the various companies. He owned 100 shares of stock of the Company at that time, that is it stood in his name on the books of the Company. As regards your information that the Butte Coalition Company owned a majority of the shares of the stock of the Alice Company, I will say that they did not appear of record as a stockholder at that time, whatever stock they did own stood in the name of individuals. The hundred shares standing in Mr. Harper's name were owned by the Butte Coalition Company. Mr. Carson likewise resigned and Mr. T. J. Clarke was elected to fill the vacancy. Mr. Clarke is the Assistant Secretary, I think of the Hedley Gold Mining Company. As I remember it, Mr. Clarke held 100 shares of the Alice Company for the Butte Coalition. The Stockholders' Meeting at which action was taken, appears in this book at pages 61 to 86, inclusive.

MR. WALSH: I then offer the proceedings of

the Stockholders' Meeting held on the 27th of May, 1910.

Looking over the list of shares present at the Stockholders' Meeting, referred to, I will indicate the persons apparently owners of stock in the Alice Gold & Silver Mining Company, who were really holding the stock standing in their names for the Butte Coalition Company. They are as follows: E. S. Ferry, 100; J. W. Allen, 115,098; W. S. Harper, 100; John D. Ryan, 60656; W. D. Thornton, 58161; John D. Clarke, 100; total 234,215. Mr. E. S. Ferry was a member of the law firm of Richards & Ferry, of Salt Lake. I think he is now dead. He was counsel for the Alice for the State of Utah. His firm, I think, had an annual retainer and looked after whatever business of this character it was necessary to take care of in the State of Utah. I think they were paid by me as Treasurer of the Alice Company. I believe Mr. D. Gay Stivers is a lawyer in Butte, one of the Attorneys for the Anaconda Company. The Mr. Hamer who is substitute proxy for L. McQueeney, I do not know. Mr. E. S. Ferry became proxy for all the stockholders commencing with Mrs. Caroline Adler, down to Joseph F. Baer. A proxy was inclosed with the call of the meeting sent to all stockholders, and I assume Mr. Ferry's name was printed in the proxy. The best of my recollection is that the proxy originated from my office. Exhibit "LL" is the blank copy of the proxy that was sent out, that I have told you about. It contemplated that it might be voted by either, Thornton,

Ferry or Kelly. Mr. Kelly is the General Counsel for the Anaconda Company in Butte. There was a circular letter accompanying each of these proxies, as is customary, even in the case of an annual meeting.

MR. WALSH: We offer exhibit "LL" in evidence.

I know of no other stockholders who hold stock in trust. Complainants' exhibit "MM," consisting of 14 letters are the letters sent out with these proxies.

MR. WALSH: We offer complainants' exhibit "MM" in evidence.

Mr. Ferry had these proxies and was called upon to vote to em, but I do not know as there were any directions sent to him direct in those letters. Apparanetly those letters were all that were found in the files. I do not know as I can say how Mr. Ferry was advised as to how he should vote at the meeting. As far as I know he might have voted against this proposition to sell, but, of course, I did not expect anything of that kind, presumably somebody must have given Mr. Ferry directions to vote the proxies in favor of the proposition. I assume whatever directions Mr. Ferry got came either from Mr. Kelly or Mr. Thorator. Mr. D. Gay Stivers was at the meeting, and acted as Secretary. It is very probably that instructions were carried by him. He would get his instructions from the officers of the Alice Gold & Silver Mining Company. Such directions might be imparted verbally by one of the officers of the Com-

pany, either the President, Vice-President, or the Secretary and Treasurer. As Secretary and Treasurer, I did not give him directions, so I presume that the instructions were either from the President or Vice-President. Possibly Mr. Hamer was a clerk in the Offices of Richards & Ferry.

MR. WALSH: I now want to offer the Minutes of the meeting of the directors held on Monday, the 12th day of April, 1911, appearing at pages 109 and 110 of the record; also the meeting of stockholders, appearing at pages 111 to 122, being the dissolution meeting; said minutes were marked "Complainants' exhibit NN," and are hereinafter set out in full.

The correspondence I have in relation to the dissolution meeting is in substance the same as that in connection with the other meeting.

Cross Examination.

There were about 2000 stockholders of the Butte Coalition Company when its stock was originally issued; about 3500 in 1910, and about 3000 at the time of the dissolution of the Company.

(Witness Excused.)

(The exhibits referred to in the testimony of the witness, Allen, are respectively, as follows.)

Exhibit KK.

Minutes of a Special Meeting of the Board of Directors of the ALICE GOLD & SILVER MINING COMPANY, held at the office of the Company, 42 Broadway, New York City, on Wednesday, the 27th day of April, A. D. 1910, at 12 o'clock M.

PRESENT: John D. Ryan, W. D. Thornton, J.

W. Allen and A. C. Carson, Directors of the Company.

The following waiver of notice and consent to the holding of the meeting was signed by the following named Directors:

We, the undersigned, Directors of the Alice Gold & Silver Mining Company, do severally waive notice of a special meeting of the Directors of the said Company, and do hereby consent to the holding of such meeting on Wednesday, the 27th day of April, A. D. 1910, at the hour of 12 o'clock, M., and to the transaction thereat of any and all business which may properly come before said meeting, with the same effect as if such meeting had been regularly called and due notice thereof given to all concerned.

(Signed) JOHN D. RYAN,
" W. D. THORNTON,
" A. C. CARSON,
" J. W. ALLEN.

A written waiver of notice and consent to holding the meeting, signed by Mr. E. S. Ferry, one of the Directors, was presented to the meeting and filed with the Secretary.

The meeting was duly organized, Mr. John D. Ryan, President of the Company, acting as Chairman of the meeting, and Mr. J. W. Allen, Secretary of the Company, acting as Secretary thereof.

The President stated the purpose of the meeting; whereupon the following resolution was introduced, and upon motion, duly seconded, was unanimously adopted:

WHEREAS, the Anaconda Copper Mining Company, a corporation organized under the laws of the State of Montana, has offered to purchase all of the property of every kind, character and description, owned or possessed by this Company, and to issue and pay to this Company in exchange therefor 30,000 shares of the full paid capital stock of said Anaconda Copper Mining Company; and,

WHEREAS, it is believed by the Board of Directors of this Company that it is to the best interests of this Company and its shareholders to accept the said offer; therefore, be it

RESOLVED, that this Company proceed to sell and convey to the said Anaconda Copper Mining Company all of the lands, mining claims, mines, equipment and other assets of every kind, character and description owned or possessed by this corporation, upon the payment therefor of 30,000 shares of the capital stock of the said Anaconda Copper Mining Company, said sale and transfer to be made subject to the ratification and approval of a majority in amount of the capital stock of this Company at a meeting of the stockholders of this Company to be called for the purpose of considering the ratification of said sale and transfer as required by law; and be it further

RESOLVED, that subject to the foregoing conditions, the officers of this Company, be, and they are hereby, authorized, empowered and directed to do and perform each and every act necessary and requisite to fully carry out and make effective

the provisions and intent of this resolution in accordance with law so as to fully and completely divest this company of all right, or claim, title, or claim of title, in or to all or any of the above specified property, and to pass all and every right, title and interest of this Company in and to said property to the said Anaconda Copper Mining Company; and be it further

RESOLVED, that the officers of this Company be, and they are hereby, specially authorized, empowered and directed to make such sale, transfer and conveyance above provided for as of any date which may be agreed upon by them and the officers of the Anaconda Copper Mining Company. The said Anaconda Copper Mining Company, as a condition to the sale aforesaid, to assume, carry out and fully discharge all of the obligations and liabilities of every kind and character, whether in contract or in tort, and whether now or hereafter enforceable against this Company; to enter into such contracts and agreements with the said Anaconda Copper Mining Company as may be necessary to close up the general business and affairs of this Company; giving and granting unto the said officers of this Company full power and authority to make, execute, acknowledge and deliver deeds of conveyance, assignments, transfers, stipulations or such other instruments as may be necessary to fully carry out the provisions and purposes of this resolution; and be it further

RESOLVED, that the proper officers of this

Company be and they are hereby, authorized to call a special meeting of the stockholders of this Company to meet at the principal office of this Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D. 1910, at 10 o'clock A. M., for the purpose of considering the foregoing transaction and ratifying the same; and that for the purpose of said meeting the Transfer Books of this Company close on the 4th day of May, A. D. 1910, at the hour of three o'clock, P. M., and re-open on the 28th day of May, A. D. 1910, at the hour of ten o'clock, A. M.

The written resignation of Mr. W. D. Thornton, as a Director and Vice President of the Company, was presented to the Board and duly accepted.

Mr. W. S. Harper was nominated to fill the vacancy caused by the resignation of Mr. Thornton as such director and Vice President; there being no other nominations, on motion, duly seconded, Mr. W. S. Harper was elected a member of the Board of Directors and Vice President of the Company, to serve in place of Mr. Thornton, and immediately took his seat as such Director and Vice President.

The written resignation of Mr. A. C. Carson, as a Director of the Company, was presented to the Board and was duly accepted.

Mr. J. D. Clarke was nominated to fill the vacancy caused by the resignation of Mr. Carson; there being no other nominations, on motion, duly seconded, Mr. J. D. Clarke was elected a member of the Board of Directors to serve in place of Mr.

Carson, and immediately took his seat as such Director.

There being no further business to come before the meeting, the same was, upon motion duly seconded and unaimously adopted, adjourned.

JOHN D. RYAN,

Chairman.

J. W. ALLEN,

Secretary.

Salt Lake City, Utah, April 25, 1910.

I hereby waive notice of the special meeting of the Board of Directors of the Alice Gold & Silver Mining Company, to be held at New York City, State of New York on the 27th day of April, 1910, and consent to any action that may be taken by the directors at said meeting or any adjournment thereof.

EDW. S. FERRY.

Witness:

WILLARD HAMER.

Minutes of a Special Meeting of the Stockholders of the ALICE GOLD & SILVER MINING COMPANY, held at the principal office of the Company, in the Utah Savings & Trust Company Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., at 10 o'clock, A. M.

The following named stockholders, owning or representing the number of shares of the capital stock of the Company hereinafter set opposite their respective names, were persent in person or by proxy, filed with the Secretary, to-wit:

E. S. Ferry, in person, owning	100	Shares
Joe Richards, by D. Gay Stivers, proxy	300	"
Isabelle McQueeny, by Willard Hamer, substitute proxy	1,000	"
Lina H. Spear by Willard Hamer, substitute proxy	100	"
Henry C. Frank, by F. S. Richards, substitute proxy	200	"
Charles F. Gibson, by F. S. Richards, substitute proxy	2,000	"
Adler, Mrs. Caroline, by E. S. Ferry, proxy	200	"
Aikman, Mrs. N. Augusta " " " " "	200	"
Allen, Joseph W., by E. S. Ferry, proxy	115,098	"
Allen, Noman F., " " " " "	33	"
Bach, Anna B., Mrs. " " " " "	200	"
Benjamin, George C " " " " "	100	"
Bogle, John " " " " "	50	"
Boyd, Miss Margaret C " " " " "	100	"
Brown, Charlotte A " " " " "	75	"
Brown, Miss Mabel " " " " "	20	"
Brown, Miss Margaret " " " " "	20	"
Brown, Mrs. Margaret C. " " " " "	15	"
Brown, William C., Jr " " " " "	20	"
Carroll, Mrs. Julia F. " " " " "	100	"
Catlin, Ephrom, " " " " "	200	"
Chislett, Wm. " " " " "	250	"
Clarke, John D " " " " "	100	"
Collins, James V " " " " "	1,000	"
Collins, W. L. " " " " "	42	"
Conlon, Patrick " " " " "	100	"
Curtis, N. M. " " " " "	500	"
Driscoll, Dennis, " " " " "	200	"

Anaconda Copper Mining Co. et al. 627

Durston, John H	by E. S. Ferry, proxy	500	"
Eames, Elizabeth Miss	" " " " "	200	"
Eising & Co., E.	" " " " "	100	"
Ferns, John	" " " " "	500	"
Fink, J. C.	" " " " "	10	"
Flannigan, Jerry	" " " " "	200	"
Force, Marion Mrs. S.	" " " " "	200	"
Fuller, Miss Rhoda	" " " " "	100	"
Gehrmann, Chas.	" " " " "	50	"
Gold, Meyer	" " " " "	100	"
Goldberg, David	" " " " "	100	"
Goodman, Milton F.	" " " " "	300	"
Goodman, Mrs. Sarah	" " " " "	200	"
Graves, S. R.	" " " " "	54	"
Gunniss, Mrs. Annie	" " " " "	200	"
Haight, Edward	" " " " "	100	"
Haley & Co., Caleb	" " " " "	200	"
Hall, Mrs. Ella B.	" " " " "	25	"
Harper, Walter S.	" " " " "	100	"
Harris, Samuel	" " " " "	100	"
Hayes, H. J.	" " " " "	54	"
Heidelsheimer, S.	" " " " "	200	"
Hess, Ferdinand	" " " " "	200	"
Howatson, Robert	" " " " "	25	"
Irvine, E. J.	" " " " "	25	"
Kirkpatrick, James	" " " " "	100	"
Knapp, John A.	" " " " "	400	"
Kringel, Ira C.	" " " " "	200	"
Love, William	" " " " "	100	"
Lukach, Isidor	" " " " "	100	"
Lyons, Michael	" " " " "	100	"
McConihe, A. Douglas	" " " " "	300	"

McCormick, J. E.	by E. S. Ferry, proxy	500	"
McGovern, James	" " " " "	200	"
McHugh, Thomas	" " " " "	100	"
Maas, Wm.	" " " " "	2,500	"
Macinder & Co., James	" " " " "	200	"
MacMillan, Mrs. Alice R.	" " " " "	1,400	"
Malcom & Coombe	" " " " "	100	"
Muldoon, Mrs. Martha J.	" " " " "	25	"
Morris, Sternbach & Co.	" " " " "	300	"
Newborg & Co.,	" " " " "	11,925	"
Newton, Mary M.	" " " " "	200	"
Oakes, T. F.	" " " " "	300	"
Ober, Maurice	" " " " "	800	"
Paine, Webber & Co.	" " " " "	425	"
Pease, Theodore Dennis	" " " " "	66	"
Reimel, Edward	" " " " "	400	"
Rhodes, F. B. F.	" " " " "	300	"
Robinson, E. George	" " " " "	1,600	"
Robinson, Maria Maud	" " " " "	1,800	"
Robinson, Mrs. Mary E.	" " " " "	176	"
Robinson, Miss Mary			
Elizabeth	" " " " "	1,750	"
Robinson, Nathaniel	" " " " "	1,600	"
Ryan, John D.	" " " " "	60,656	"
Salveson, Fred	" " " " "	75	"
Shearer, Charles T.	" " " " "	50	"
Shaley, Mrs. Mina B.	" " " " "	200	"
Shores, Arthur J.	" " " " "	300	"
Spencer, Chas. D.	" " " " "	350	"
Spratt, Thomas	" " " " "	100	"
Stokes, Mrs. Ada	" " " " "	650	"
Strong, A. C.	" " " " "	100	"

Anaconda Copper Mining Co. et al. 629

Sutro Bros. & Co.,	by E. S. Ferry, proxy	200	"
Thornton, W. D.	" " " "	58,161	"
Turner, Mrs. Anna	" " " "	300	"
Turner, Christopher	" " " "	350	"
Valentine, W. S.	" " " "	100	"
Van Sant, O. B.	" " " "	200	"
Wagner, Wm.	" " " "	100	"
Weil, Harry S.	" " " "	100	"
Westheimer, N.	" " " "	1,200	"
White, Miss Mary	" " " "	20	"
Whiting, John C.	" " " "	145	"
Willenberg, Carl	" " " "	100	"
Wimpfheimer, Chas. A.	" " " "	1,000	"
Wooster, Mattie V.	" " " "	100	"
Wynne, W. E.	" " " "	200	"
Eliassof, Harry N.	" " " "	500	"
Gibson, Wm. H.	" " " "	2,400	"
Hungate, Mary	" " " "	50	"
Keaveny, James	" " " "	10	"
Lewisohn Bros.	" " " "	1,300	"
Lorton, Hattie A.	" " " "	100	"
Mayo, Edwin L.	" " " "	600	"
Peck, Thomas	" " " "	500	"
Tingle, Elizabeth	" " " "	200	"
William Tebbs	" " " "	100	"
Estate of Armitage			
Rhodes, deceased,	" " " "	142	"
Estate of Colonel			
Rhodes, deceased,	" " " "	333	"
Morris Eisenberg,	" " " "	1,000	"
Rhodes, Mrs. Mable	" " " "	7	"
Frances V. Emerson	" " " "	225	"

Mary E. Hutton	by E. S. Ferry, proxy	433	"
Ella T. Pearson	" " " " "	50	"
Wm. E. Wallace	" " " " "	50	"
Victor Day,	" " " " "	200	"
Joseph S. Baer in person, owning		300	"
J. R. Walker, in person, owning		2,110	"
Peter Geddes by Jos. R. Walker, proxy		3,100	"
W. C. Lewis,	By E. S. Ferry, proxy	500	"
H. Hobert Keeler	" " " " "	1,500	"
Alfred Clifford	" " " " "	500	"
Total		295,100	"

It appearing that there was represented at the meeting in person or by proxy, stockholders owning or representing a total of 295,100 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than a majority of the entire capital stock of the Company, the meeting was duly organized as follows:

On motion duly made and seconded, Mr. E. S. Ferry was nominated and elected Chairman of the meeting 295,100 shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. Ferry took the chair.

On motion duly made and seconded, Mr. D. Gay Stivers, a suitable person, was elected Secretary of the meeting.

The chairman thereupon announced that proof had been made by the affidavits of J. W. Allen, secretary of the Company, Blanche H. Newcomb, clerk of the "Salt Lake Telegram," a daily newspaper published in the City of Salt Lake, Utah,

and also by Mr. Joseph F. MacDonald, clerk of the "New York Times," a daily newspaper published in the City of New York, State of New York, that notice had been duly given by mailing and publication to the stockholders of the company, as required by the by-laws of the corporation.

Said affidavits were exhibited at the meeting, filed with the secretary, and are respectively in the following form:

State of New York,

County of New York, ss.:

J. W. ALLEN, being first duly sworn, deposes and says: That he is the secretary of the Alice Gold & Silver Mining Company, that acting under and by virtue of a resolution duly adopted by the board of directors of said company at a special meeting of said Board, held at the office of the Company, No. 42 Broadway, New York City, New York, on Wednesday, the 27th day of April, A. D., 1910, at 12 o'clock M. affiant made out and caused the following notice of said meeting to be deposited in the United States Mail, enclosed in a suitable envelope, with postage prepaid thereon addressed and directed to each stockholder of record of the above named company, by his name and to his place of residence appearing upon the records of said company.

Affiant further says that acting under said resolution he gave instructions that a similar notice should be published daily for at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 5th day of May, A.

D., 1910, to the 27th day of May, A. D., 1910, in the "Salt Lake Telegram," a daily newspaper of general circulation, published at the City of Salt Lake, Salt Lake County, Utah, and also gave instructions that the said notice should be published at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 4th day of May, A. D., 1910, to the 27th day of May, A. D., 1910; said notice above referred to being in the following form:

**"NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS**

of

ALICE GOLD & SILVER MINING COMPANY.

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings and Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M., for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all of the property and assets of every kind and character owned or possessed by

the Alice Gold & Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY.

J. W. ALLEN,

Secretary."

(Signed) J. W. ALLEN.

Subscribed and sworn to before me, this 19th day of May, A. D., 1910.

HENRY MICHAELIS.

Notary Public for the State of New
(Notarial York, residing at New York City, N. Y.

Seal) My Commission expires March 30,
1912.

State of New York,

County of New York, ss.

JOSEPH F. MACDONALD, being first duly sworn, says: That he is the principal clerk of the "New York Times," a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 4th day of May, A. D., 1910, up to and including the

27th day of May, A. D., 1910.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May 19th, 1910, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the 27th day of May, A. D., 1910, as follows:

**NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF
ALICE GOLD AND SILVER MINING COMPANY.**

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the

Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M., for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company

to the said Anaconda Copper Mining Company in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the Alice Gold & Silver Mining Company,

J. W. ALLEN,
Secretary."

(Signed) JOSEPH F. MACDONALD.

Subscribed and sworn to before me this 20th day of May A. D., 1910.

(Signed) HUGH C. PARKER,

Notary Public, Kings Co., Registered
(Notarial in New York Co. 2115.

Seal) Notary Public for Kings County, N. Y.,
residing at Brooklyn, N. Y.

My Commission Expires March 30, 1912.
State of Utah,
County of Salt Lake, ss.

BLANCHE H. NEWCOMB, being first duly sworn, says: That she is the principal clerk of the "Salt Lake Telegram," a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 5th day of May, A. D. 1910, up to and including the

27th day of May, A. D., 1910.

Affiant further says that pursuant to said instructions she received the said notice, and that the said notice has been published daily in the regular issue of said paper from the 5th day of May, A. D., 1910, to the 27th day of May, A. D., 1910, inclusive.

**"NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS**

of

**ALICE GOLD & SILVER MINING COMPANY,
Salt Lake City, Utah, May 2, 1910.**

To the Stockholders of the

Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D. 1910, at the hour of 10 o'clock A. M. for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered in to between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice

Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN,
Secretary."

(Signed) BLANCHE H. NEWCOMB,
Subscribed and sworn before me, this 27th day
of May, A. D., 1910.

(Signed) H. J. SCHULTZ,
Notary Public for the State of Utah,
(Notarial Residing at Salt Lake City, Utah.

Seal) My Commissions expires February
10th, 1914.

Thereupon the chairman appointed Mr. D. Gay Stivers and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the Secretary, and the said committee, after an examination of said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the company, representing 295,100 shares of the capital stock of the company, which said shares of stock, and the owners or representatives thereof, are hereinbefore spread on the minutes of said meeting.

On motion duly made, seconded and adopted, the report of the committee was accepted.

Thereupon, the said proxies were exhibited to

the meeting, and, after examination, were filed by the Secretary in his office.

The chairman then stated to the meeting the purposes for which the same had been called, and the secretary read to the meeting the minutes of the Director's meeting held on the 27th day of April, A. D., 1910, at the office of the Company, No. 42 Broadway, New York City, New York.

On motion, duly made, seconded and adopted, the said proceedings of the said directors, as the same appear of record at said meeting were ratified, approved and confirmed, and made the act of the stockholders of this corporation.

WHEREUPON, the following resolution was introduced:

WHEREAS, at a special meeting of the Board of Directors of this company, held at the office of the Company, 42 Broadway, New York City, New York, on Wednesday, the 27th day of April, A. D., 1910, it was decided to call a special meeting of the stockholders of this company on the 27th day of May, A. D., 1910, for the purpose of considering a proposition to ratify, approve and confirm a certain contract which the officers of this corporation were authorized by the Board of Directors to enter into with the officers of the Anaconda Copper Mining Company, providing for a sale, transfer and conveyance of all of the property and assets owned or possessed by this company, of every kind and character, real, personal and mixed, corporal and incorporeal, in law and in equity, for thirty thousand (30,000) shares

of the capital stock of the Anaconda Copper Mining Company, said contract of sale to be made subject to the ratification, approval and authorization of the stockholders of this corporation at this meeting, as required by law, and

WHEREAS, acting under and by virtue of the authority so conferred by said resolution, the following agreement and contract of sale has been duly entered into by the officers of this company on behalf of this company with the officers of the Anaconda Copper Mining Company on behalf of the last named corporation; be it

RESOLVED, that the acts of the officers of this corporation in entering into the following agreement and contract of sale, to-wit:

THIS AGREEMENT, made and entered into this 19th day of May, A. D., 1910, between the Alice Gold & Silver Mining Company, a corporation organized under the laws of the State of Utah, hereinafter designated as the "FIRST PARTY," and the ANACONDA COPPER MINING COMPANY, a corporation organized under the laws of the State of Montana, hereinafter designated as the "second party"

WITNESSETH:

That subject to the conditions and agreements hereinafter set forth, the first party hereby agrees to sell and does hereby sell, for and in consideration of thirty thousand (30,000) shares of the capital stock of the second party, full paid, at par and non-assessable, to be issued and delivered by the second party to the first party, or to such

person or persons as the first party may hereafter designate; and the second party hereby agrees to purchase, and does hereby purchase, upon the conditions aforesaid, all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, reduction works, and all other works, machinery, tools and implements whatsoever, to the first party belonging, and wherever situate, lying or being, and for whatever purpose used, owned or possessed.

Also, all water and water rights, reservoirs and reservoir rights, pipes, flumes, ditches, aqueducts and other works and rights of way therefor.

Also, all lands, easements and other real estate, improved and unimproved, to the first party belonging, and wherever situate, lying or being, together with all and singular all rights and privileges possessed or enjoyed in connection therewith.

Also, all right, title and interest whatsoever, legal or equitable, of the first party, of in and to any and all mines, mining rights, lands, easements or other real estate whatsoever, and wherever situate, lying or being.

Also all works, plants, mills, tramways, machinery, furniture, supplies, equipment, stock on hand, business, good will and other property whatsoever, and wherever situate, lying or being.

Also, all bills receivable, accounts, money on hand, moneys due or to become due by reason of any past sales or transactions, and all ores, minerals and metals which have been mined; all

matte, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining; all precipitates, and all argentiferous mud ready to be melted or parted, owned or possessed by said first party.

Also, any and all other properties, real personal and mixed corporeal and incorporeal, legal and equitable, choses in action, and possession, of every kind, character and description, wherever the same may be situated, belonging to the said first party, or in which the said first party is in any wise interested or entitled to become interested.

Said first party does also give, and grant unto said second party the right to inspect, examine, and at all reasonable times to take copies of all books of account, minutes, records, letters, copies of letters, files, and all other private books, documents and papers whatsoever, of said first party.

The foregoing sale and transfer is made subject to the following conditions:

(a) Said second party agrees to take over, and does hereby take over, the said property of the said first party as of the 30th day of April, 1910, and agrees to carry out and fully perform and discharge all contracts, obligations and liabilities of every kind, character and description, whether in contract or in tort, and whether now or hereafter enforceable against the first party, and to undertake to and fully carry out and completely perform all valid executory provisions of any contract or contracts which may exist at the date of

the transfer and delivery of all of the property and assets of said first party to said second party.

(b) Also, subject to all existing leases, releases, rights of way and other easements heretofore granted, made or given by the said first party or its predecessors in interest, and also to all vested rights obtained by others against said first party or its predecessors in interest by legal proceedings or by adverse possession or user.

(c) All taxes, liens and assessments upon, or any part, of the property sold, or against the first party, whether due and payable, or to become due and payable, shall be paid by said second party hereto.

(d) Said first party agrees to make, execute and deliver, through its proper officers, duly authorized, any and all deeds, conveyances or other instruments necessary or proper for carrying out this agreement according to its true intent and meaning and said second party agrees to make, execute and deliver such undertakings, releases, stipulations or other instruments as may be necessary on its part to carry out all of the terms and provisions of this agreement according to its true intent and meaning.

(e) It is expressly understood and agreed that the foregoing contract of sale and transfer is made subject to the confirmation and ratification thereof by the stockholders of the said first party at a special meeting of said stockholders, called for that purpose to meet at the principal office of the Company in the Utah Savings &

Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A. D., 1910, it being the intention of this agreement to sell and convey all of the property and assets specified in this contract subject only to the conditions herein expressed and the said ratification and confirmation of said contract by the said stockholders of said first party.

IN WITNESS WHEREOF, the parties hereto have caused their corporate names to be hereunto signed by their respective Presidents, and their corporate seals to be hereunto affixed, and attested by their respective Secretaries, the day and year in this instrument first above written.

(Signed)

ALICE GOLD & SILVER MINING CO.,

“ By JOHN D. RYAN, It's President.

Attest:

J. W. ALLEN, Its Secretary.

ANACONDA COPPER MINING CO.,

(Seal)

By B. B. THAYER,

Its President.

Attest:

C. F. KELLEY,

Its Secretary.

State of New York,

County of New York, ss.

On this 19th day of May, in the year 1910, before me, N. E. Bryans, a Notary Public, in and for said County and State, personally appeared John D. Ryan, known to me to be the President of the Alice Gold & Silver Mining Company, the cor-

poration that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

Notary Public for the State of New
(SEAL) York, residing at New York City, N. Y.

My commission expires March 30, 1911."

State of New York,

County of New York, ss.

On this 19th day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared B. B. Thayer, known to be to be the President of the Anaconda Copper Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

Notary Public for the State of New
(SEAL) York, residing at New York City, N. Y.

My commission expires March 30, 1911.
be, and the same are hereby, in all respects ratified, approved, confirmed and made the acts of this corporation; and be it further

RESOLVED, that the foregoing agreement and

contract of sale is in all of its terms, stipulations, provisions and agreements hereby ratified, approved, confirmed and made the act and deed of this corporation, and that the Board of Directors and the proper officers of this corporation be, and they are hereby authorized, empowered and directed to do and perform each and every act necessary and requisite to fully carry out and make effective the provisions and intent of this resolution and agreement and contract of sale, in accordance with law, so as to fully and completely divest this company of all right, or claim of right, title, or claim of title, in or to all or any of the above specified property, and to pass all and every right, title and interest of this company in and to said property to the said Anaconda Copper Mining Company, upon the payment by said Anaconda Copper Mining Company to the credit of this company, of thirty thousand (30,000) shares of the capital stock of the said Anaconda Copper Mining Company: and be it further

RESOLVED, that the officers of this company, be, and they are hereby, authorized, empowered and directed to make, execute, acknowledge and deliver such deeds of conveyance, assignments, transfers, stipulations or other instruments as may be necessary to fully and completely carry out the provisions and purposes of said agreement and contract of sale.

On motion duly made and seconded that the said resolution be adopted, the following stockholders voted in favor of said resolution:

E. S. Ferry, in person, owning	100	Shares
Joe Richards, by D. Gay Stivers, proxy	300	"
Isabelle McQueeny, by Willard Hamer, substitute proxy	1,000	"
Lina H. Spear by Willard Hamer, substitute proxy	100	"
Henry C. Frank, by F. S. Richards, substitute proxy	200	"
Charles F. Gibson, by F. S. Richards, substitute proxy	2,000	"
Adler, Mrs. Caroline, by E. S. Ferry, proxy	200	"
Aikman, Mrs. N. Augusta " " " " "	200	"
Allen, Joseph W., " " " " "	115,098	"
Allen, Norman F., " " " " "	33	"
Bach, Anna B., Mrs. " " " " "	200	"
Benjamin, George C " " " " "	100	"
Eagle, John " " " " "	50	"
Boyd, Miss Margaret C " " " " "	100	"
Brown, Charlotte A " " " " "	75	"
Brown, Miss Mabel " " " " "	20	"
Brown, Miss Margaret " " " " "	20	"
Brown, Mrs. Margaret C. " " " " "	15	"
Brown, William C., Jr " " " " "	20	"
Carroll, Mrs. Julia F. " " " " "	100	"
Catlin, Ephron, " " " " "	200	"
Chislett, Wm. " " " " "	250	"
Clarke, John D. " " " " "	100	"
Collins, James V. " " " " "	1,000	"
Collins, W. L. " " " " "	42	"
Conlon, Patrick, " " " " "	100	"
Curtis, N. M. " " " " "	500	"
Driscoll, Dennis, " " " " "	200	"

Anaconda Copper Mining Co. et al. 647

Durston, John H	by E. S. Ferry, proxy	500	"
Eames, Elizabeth Miss	" " " "	200	"
Eising & Co., E.	" " " "	100	"
Ferns, John	" " " "	500	"
Fink, J. C.	" " " "	10	"
Flannigan, Jerry	" " " "	200	"
Force, Marion Mrs. S.	" " " "	200	"
Fuller, Miss Rhoda	" " " "	100	"
Gehrmann, Chas.	" " " "	50	"
Gold, Meyer	" " " "	100	"
Goldberg, David	" " " "	100	"
Goodman, Milton F.	" " " "	300	"
Goodman, Mrs. Sarah	" " " "	200	"
Graves, S. R.	" " " "	24	"
Gunniss, Mrs. Annie	" " " "	200	"
Haight, Edward	" " " "	100	"
Haley & Co., Caleb	" " " "	200	"
Hall, Mrs. Ella B.	" " " "	25	"
Harper, Walter S.	" " " "	100	"
Harris, Samuel	" " " "	100	"
Hayes, H. J.	" " " "	54	"
Heidelsheimer, S.	" " " "	200	"
Hess, Ferdinand	" " " "	200	"
Howatson, Robert	" " " "	25	"
Irvine, E. J.	" " " "	25	"
Kirkpatrick, James	" " " "	100	"
Knapp, John A.	" " " "	400	"
Kringel, Ira C.	" " " "	200	"
Love, William	" " " "	100	"
Lukach, Isidor	" " " "	100	"
Lyons, Michael	" " " "	100	"
McConihe, A. Douglas	" " " "	300	"

McCormick, J. D.	by E. S. Ferry, proxy	500	"
McGovern, James	" " " " "	200	"
McHugh, Thomas	" " " " "	100	"
Maas, Wm.	" " " " "	2,500	"
Macinder & Co., James	" " " " "	200	"
MacMillan, Mrs. Alice R.	" " " " "	1,400	"
Malcom & Coombs	" " " " "	100	"
Muldoon, Mrs. Martha J.	" " " " "	25	"
Morris, Sternbach & Co.	" " " " "	300	"
Newborg & Co.,	" " " " "	11,925	"
Newton, Mary M.	" " " " "	200	"
Oakes, T. F.	" " " " "	300	"
Ober, Maurice	" " " " "	800	"
Paine, Webber & Co.	" " " " "	425	"
Pease, Theodore Dennis	" " " " "	66	"
Reimel, Edward	" " " " "	400	"
Rhodes, F. B. F.	" " " " "	300	"
Robinson, E. George	" " " " "	1,600	"
Robinson, Maria Maud	" " " " "	1,800	"
Robinson, Mrs. Mary E.	" " " " "	176	"
Robinson, Miss Mary			
Elizabeth	" " " " "	1,750	"
Robinson, Nathaniel	" " " " "	1,600	"
Ryan, John D.	" " " " "	60,656	"
Salveson, Fred	" " " " "	75	"
Shearer, Charles T.	" " " " "	50	"
Shaley, Mrs. Mina B.	" " " " "	200	"
Shores, Arthur J.	" " " " "	300	"
Spencer, Chas. D.	" " " " "	350	"
Spratt, Thomas	" " " " "	100	"
Stokes, Mrs. Ada	" " " " "	650	"
Strong, A. C.	" " " " "	100	"

Anaconda Copper Mining Co. et al. 649

Sutro Bros. & Co.,	by E. S. Ferry, proxy	200	"
Thornton, W. D.	" " " "	58,161	"
Turner, Mrs. Anna	" " " "	300	"
Turner, Christopher	" " " "	350	"
Valentine, W. S.	" " " "	100	"
Van Sant, O. B.	" " " "	200	"
Wagner, Wm.	" " " "	100	"
Weil, Harry S.	" " " "	100	"
Westheimer, N.	" " " "	1,200	"
White, Miss Mary	" " " "	20	"
Whiting, John C.	" " " "	145	"
Willenberg, Carl	" " " "	100	"
Wimpfheimer, Chas. A.	" " " "	1,000	"
Wooster, Mattie V.	" " " "	100	"
Wynne, W. E.	" " " "	200	"
Eliassof, Harry N.	" " " "	500	"
Gibson, Wm. H.	" " " "	2,400	"
Hungate, Mary	" " " "	50	"
Keaveny, James	" " " "	10	"
Lewisohn Bros.	" " " "	1,300	"
Lorton, Hattie A.	" " " "	100	"
Mayo, Edwin L.	" " " "	600	"
Peck, Thomas	" " " "	500	"
Tingle, Elizabeth	" " " "	200	"
William Tebbs	" " " "	100	"
Estate of Armitage			
Rhodes, deceased,	" " " "	142	"
Estate of Colonel			
Rhodes, deceased,	" " " "	333	"
Morris Eisenberg,	" " " "	1,000	"
Rhodes, Mrs. Mable	" " " "	7	"
Frances V. Emerson	" " " "	225	"

Mary E. Hutton	by E. S. Ferry, proxy	433	"
Ella T. Pearson	" " " " "	50	"
Wm. E. Wallace	" " " " "	50	"
Victor Day,	" " " " "	200	"
W. C. Lewis	" " " " "	500	"
H. Hobert Keeler	" " " " "	1,500	"
Alfred Clifford	" " " " "	500	"

And the following stockholders voted against said resolution:

Joseph S. Baer in person, owning	300	"
J. R. Walker, in person, owning	2,110	"
Peter Geddes by Jos. R. Walker, proxy	3,100	"

It appearing that of the entire capital stock represented at said meeting, 289,590 shares have been voted in favor of said resolution, and the same constituting more than a majority of all of the issues capital stock of the corporation, the said resolution was declared duly carried by the chairman and the officers of the company were instructed to carry its purport into full operation and effect.

Upon motion, duly made, seconded and adopted, said meeting was adjourned.

(Signed) E. S. FERRY,
Chairman.

(Signed) D. GAY STIVERS,
Secretary.

State of Utah,
County of Salt Lake, ss.

E. S. Ferry, being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the stockholders of

Anaconda Copper Mining Co. et al. 651

the Alice Gold & Silver Mining Company, held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D., 1910, that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) E. S. FERRY

Subscribed and sworn to before me, this 27th day of May, A. D. 1910.

(Signed) HARVEY J. JONES,

Notary Public for State of Utah,
residing at Salt Lake City, Utah.

My Commission expires March 8th, 1912.

State of Utah,

County of Salt Lake, ss.

On this 27th day of May, A. D., 1910, before me, Harvey J. Jones, a Notary Public in and for said County and State personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of special meeting of the stockholders of the Alice Gold & Silver Mining Company, as chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day

and year in this certificate first above written.

(Signed) HARVEY J. JONES,
Notary Public for the State of Utah,
residing at Salt Lake City, Utah.

My Commission Expires March 8, 1912.

State of Utah,

County of Salt Lake.

D. GAY STIVERS, being first duly sworn, says upon oath: that he is the person who acted as secretary of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D., 1910; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) D. GAY STIVERS

Subscribed and sworn to before me, this 27th day of May, A. D., 1910.

(Signed) HARVEY J. JONES,
Notary Public for the State of Utah,
residing at Salt Lake City, Utah.

My Commission Expires March 8, 1912.

State of Utah,

County of Salt Lake, ss.

On this 27th day of May, A. D., 1910, before me, Willard Hamer, a Notary Public in and for said

County and State, personally appeared D. GAY STIVERS, known to me to be the person whose name is subscribed to the foregoing minutes of the special meeting of the stockholders of the Alice Gold & Silver Mining Company, as secretary thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal, the day and year in this certificate first above written.

(Signed) WILLARD HAMER,
Notary Public for the State of Utah,
Residing at Salt Lake City, Utah.
My Commission expires May 16, 1913.

We, the undersigned, stockholders, and proxies and representatives of stockholders of the Alice Gold & Silver Mining Company, present at the Special Meeting of the Stockholders of said company, held on the 27th day of May, A. D. 1910, hereinbefore recorded, do hereby certify that the foregoing minutes of the said meeting are full, true and correct; and we, and each of us did, at such meeting, and hereby do, concur in each and all of the resolutions and proceedings in said minutes recorded.

IN WITNESS WHEREOF, we have this 27th day of May, A. D., 1910, hereunto subscribed our names, and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

(Signed) E. S. FERRY 100 shares.
“ E. S. FERRY, proxy 285,890 shares.
“ Y. T. RICHARDS “ 2,200 shares.
“ WILLARD HAMER “ 1,100 shares.
“ D. GAY STIVERS “ 300 shares.

OFFICE OF THE ALICE GOLD AND SILVER
MINING COMPANY,

Room No. 503, Utah Savings & Trust Building.
Salt Lake City, Utah, May 27, 1910.

We, the undersigned, the committee designated by the Chairman of the special meeting of the stockholders of the Alice Gold and Silver Mining Company, held at the principal office of said Company, at Salt Lake City, State of Utah, on Friday, May 27th, 1910, to examine and report upon the number and correctness of the proxies filed with the Secretary, and upon the number of shares of the capital stock of said Company present or properly represented at the meeting, after examining each and all of said proxies, do hereby respectfully report that we find that there were present and properly represented at the meeting 295,100 shares of the capital stock of said Company, constituting a quorum, and that each and all of said proxies are regular, correct and satisfactory.

(Signed) D. GAY STIVERS,

(Signed) WILLARD HAMER.

Complainants' Exhibit "LL."

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, hereby make, constitute and appoint W. D. THORNTON, E. S. FERRY and C. F.

KELLEY, or any one of them, or such person or persons as they, or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place and stead of the undersigned, to vote upon the stock of the ALICE GOLD AND SILVER MINING COMPANY, a Utah corporation, according to the number of votes that the undersigned would be entitled to cast if then personally present at a special meeting of the stockholders of the said Company, to be held at its principal office in the Utah Savings & Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A. D. 1910, at 10 o'clock, A. M., and at all adjournments of said meeting, for the purposes for which said meeting has been called by resolution of the Board of Directors adopted on April 27th, A. D. 1910, namely:

First: For the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold and Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property of every kind and character owned or possessed by the Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold and Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company;

Second: For the transaction of any other business that may properly come before said meeting:

IN WITNESS WHEREOF, I hereunto set my hand and seal this day of May, A. D. 1910.

Witness:

.....(L. S.)

Exhibit MM.

RICHARDS, RICHARDS & FERRY,

Counselors at Law

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry.

June 1, 1910.

Mr. J. W. ALLEN,

Secretary Alice Gold & Silver Mining Company,
42 Broadway, New York City, N. Y.

Dear Sir:

This is to acknowledge the receipt of all of the proxies for the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company referred to in your telegrams of recent dates.

The special meeting was held and the sale of the property confirmed by majority vote of the stock represented at the meeting according to the plan outlined. There was a formal objection made to the sale by J. R. Walker and others. He represented some six thousand shares. The principal ground for their objection was that the Alice Company had no legal right to compel the stockholders

Anaconda Copper Mining Co. et al. 657
to take in payment for their stock shares in another company.

Very truly yours,
(Signed) EDW. S. FERRY.

Form 260

THE WESTERN UNION TELEGRAPH
COMPANY,

Incorporated.

24,000 Offices in America. Cable service to all the
World.

Robert C. Clowry, President and General Manager

Receiver's No	Time filed	Check
---------------	------------	-------

SEND the following message subject to the terms
on back hereof, which are hereby agreed to.

May 27, 1910.

Edward S. Ferry,
%Richards, Richards & Ferry,
Salt Lake City, Utah.

Proxy name of Walter C. Lewis five hundred
shares mail.

J. W. ALLEN.
May 27, 1910.

Edward S. Ferry, Esq.,
Salt Lake City, Utah.

Dear Sir:

I enclose herewith confirmation of my telegram to you today also proxy of Walter C. Lewis for 500 shares of Alice stock.

Yours very truly,

JWA/W

Secretary.

RICHARDS, RICHARDS & FERRY,

Counselors at Law.

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry.

May 27, 1910.

MR. J. W. ALLEN,

Secretary Alice Gold & Silver Mining Company,
42 Broadway, New York City, N. Y.

Dear Sir:

Enclosed I hand you proxy of William H. Gibson for 7,600 shares requested in your letter and telegram to Mr. Ferry, advising him to vote the new proxy for 2400 shares. The proxies have been left in Mr. Ferry's office, together with the minutes of the special meeting of the stockholders held this day, copies of the report of the committee on proxies, the minutes of the special meeting of the Board of Directors, held in New York, April 27, 1910, the original affidavits of yourself, principal clerk of the Salt Lake Telegram and the principal clerk of the New York Times as to the mailing and publication of notice of special stockholder's meeting, which are embodied in the original minutes sent you herewith.

Very truly yours,

(Signed) D. GAY STIVERS.

R. P.—

RICHARDS, RICHARDS & FERRY

Counselors at Law.

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry.

May 27, 1910.

Mr. J. W. Allen,

Secretary Alice Gold & Silver Mg. Co.,

Room 2000, 42 Broadway,

New York City, New York.

Dear Sir:—

Enclosed please find letters from Isaac Blum and N. A. Williams, with carbon copies of letters sent to them in reply.

I also enclose you original minutes of the special meeting of the stockholders held this day. I wired Mr. Kelly that there were 287,590 shares voted in favor of the proposition of sale, and 5,510 against. The total vote in favor of the sale should be 289,590, as I did not find the telegram relative to the H. H. Keeler stock, 1500, and Alfred Clifford, 500. They were included in the meeting. If Mr. Kelly has not left New York, kindly show this letter to him, with enclosures, and if so, retain for your record.

I also enclose you a letter submitted by Joseph R. Walker and Peter Geddes. Their vote was recorded against the proposition of sale, but this letter, being in the nature of an argument, I told them would have to be referred to the Secretary for submission to the Board of Directors.

The minutes of today's meeting will be filed in the office of the County Clerk and Recorder of Silver Bow County, Montana, as soon as I return

to Butte, either Saturday or Monday.

I also enclose you report of the committee on proxies.

Yours very truly,

(Signed) D. GAY STIVERS.

Form 2289

**NIGHT LETTER
THE WESTERN UNION TELEGRAPH
COMPANY**

Incorporated

**25,000 Offices in America Cable Service to all the
World.**

**Robert C. Clowry, President. Belvidere Brooks,
General Manager.**

Receiver's No	Time filed	Check
---------------	------------	-------

SEND the following NIGHT LETTER subject to the terms on back hereof which are hereby agreed to.

S. Ferry,

May 26, 1910.

%Richards, Richards & Ferry.

Salt Lake City, Utah.

Following proxies aggregating five hundred seventy-five shares mailed; two in name of Estate of the late Armitage Rhodes one hundred forty-two shares; Estate Colonel Rhodes, three hundred thirty-three; William Tebbs, one hundred.

J. W. ALLEN.

May 26, 1910.

Edward S. Ferry, Esq.,

% Messrs. Richards, Richards & Ferry,

Salt Lake City, Utah.

Anaconda Copper Mining Co. et al. 661

Dear Sir:

I am enclosing you herewith confirmation of my "Night Letter" to you today also proxies aggregating 575 shares, in the following names:

Estate of the Late Armitage Rhodes	100 shs
" " " " " "	42 "
Estate Colonel Rhodes	333 "
William Tebbs	100 "
	<hr/>
	575 shs

Yours very truly,

JWA/W

Secretary.

May 25, 1910.

Edward S. Ferry, Esq.,
Salt Lake City, Utah.

Dear Sir:

Enclosed please find confirmation of my "Night Letter" to you today; also proxies in the names of H. Hobart Keeler, 1500 shares, and Alfred Clifford, 500 shares, mentioned therein.

Yours very truly,

Secretary.

JWA/W

Form 2289

NIGHT LETTER.

THE WESTERN UNION TELEGRAPH
COMPANY.

Incorporated

25,000 Offices in America. Cable Service to all the
World.

Robert C. Clowry, President. Belvidere Brooks,
General Manager.

661

Receiver's No	Time filed	Check
---------------	------------	-------

SEND the following NIGHT LETTER subject to the terms on back hereof which are hereby agreed to.

Edward S. Ferry,

%Richards, Richards & Ferry,
Salt Lake City, Utah.

Following proxies aggregating two thousand shares mailed: H. Hobert Keeler Fifteen hundred shares; Alfred Clifford five hundred shares.

J. W. ALLEN.

RICHARDS, RICHARDS & FERRY

Counselor at Law
Salt Lake City, Utah.

Franklin S. Richards,

Joseph T. Richards

Edward S. Ferry

May 25, 1910.

MR. J. W. ALLEN,

Secretary Alice Gold & Silver Mining Company,
42 Broadway, New York City, N. Y.

Dear Sir:

Your registered package of May 21, enclosing proxies to be voted at the annual meeting, aggregating 288,350 shares, as per list therewith enclosed, was duly received. I am also in receipt of your telegram of May 24, which I repeat for confirmation, as follows:

"Following proxy aggregating 3185 shares mailed. Francis V. Emerson 225, Mary E. Hutton 433, Ella T. Pearson 50, William E. Wallace 50,

Anaconda Copper Mining Co. et al. 663
William H. Gibson 2400. Substitute Gibsons for
proxy originally given. Please return original to
me."

I shall return the original Gibson proxy as re-
quested after the meeting on Friday.

I enclose herewith a letter addressed to you,
which is an inquiry from H. E. Radeker. I as-
sumed it to be in relation to the coming meeting,
and I therefore took the liberty of opening it.

Very truly yours,

(Signed) EDW. S. FERRY.

May 24, 1910.

Edward S. Ferry, Esq.,

%Messrs. Richards, Richards & Ferry,

Salt Lake City, Utah.

Dear Sir:

Enclosed herewith please find confirmation of
my "Night Letter" to you today, also proxies ag-
gregating 3158 shares mentioned therein.

Yours very truly,

JWA/W

Secretary.

Form 2289

NIGHT LETTER.

**THE WESTERN UNION TELEGRAPH
COMPANY.**

Incorporated

**25,000 Offices in America. Cable Service to all the
World.**

**Robert C. Clowry, President. Belvidere Brooks,
General Manager.**

Receiver's No	Time filed	Check
---------------	------------	-------

664

Peter Geddes et al. vs.

SEND the following NIGHT LETTER subject to the terms on back hereof which are hereby agreed to.

May 24, 1910

Edward S. Ferry,
%Richards, Richards & Ferry,
Salt Lake City, Utah.

Following proxies aggregating thirty-one hundred fifty-eight shares mailed. Francis V. Emerson two hundred twenty-five shares; Mary E. Hutton, four hundred thirty-three; Ella T. Pearson, fifty; Wm. E. Wallace, fifty; Wm. H. Gibson, twenty-four hundred. Substitute Gibson's for proxy originally given. Please return original to me.

J. W. ALLEN.

Form 260

THE WESTERN UNION TELEGRAPH
COMPANY,
Incorporated

24,000 Offices in America. Cable Service to all the
World.

Robert C. Clowery, President and
General Manager.

Receiver's No	Time filed	Check
---------------	------------	-------

SEND the following message subject to the terms on back hereof, which are hereby agreed to.
New York May 23, 1910.

E. S. Ferry
Utah Savings & Trust Bldg.
Salt Lake, Utah.

Anaconda Copper Mining Co. et al. 665

Sending tonight following proxies: Thousand shares Maurice Isenberg; seven shares Mabel Rhodes.

J. W. ALLEN.

(Charge Alice Gold & Silver Mining Co.)

May 21, 1910.

Mr. E. S. Ferry,
Salt Lake City, Utah.

Dear Sir:

I enclose you herewith proxies to be voted at the annual meeting, aggregating 288,350 shares, as per enclosed list. Please acknowledge receipt. If any more proxies come in I shall send them to you promptly.

Yours very truly,

Secretary.

JWA/W

Exhibit NN.

MINUTES of a Special Meeting of the BOARD OF DIRECTORS of the ALICE GOLD AND SILVER MINING COMPANY, held at the office of the Company, 42 Broadway, New York City, New York, on Wednesday, the 12th day of April, A. D. 1911, at 12:30 o'clock p. m.

PRESENT:

John D. Ryan,
John D. Clarke,
J. W. Allen

ABSENT:

E. S. Ferry,
W. S. Harper.

The following waiver of notice and consent to

holding the meeting was signed by the Directors present:

We, the undersigned, Directors of the ALICE GOLD AND SILVER MINING COMPANY, do hereby severally waive notice of the Special Meeting of the Directors of said Company; and do hereby consent to the holding of said meeting at the office of said Company, 42 Broadway, New York City, New York, on Wednesday, the 12th day of April, A. D., 1911, at the hour of 12:30 o'clock p. m. and to the transaction thereat of any and all business which may properly come before said meeting to the same effect as if said meeting had been regularly called and due notice thereof given to all concerned.

(Signed) JOHN D. RYAN

“ JOHN D. CLARKE

“ J. W. ALLEN

A written waiver of notice and consent to the holding of the meeting, signed by E. S. Ferry and W. S. Harper, was presented to the meeting, and ordered filed with the Secretary.

The meeting was duly organized, Mr. John D. Ryan, the President of the Company, acting as Chairman of the meeting, and Mr. J. W. Allen, Secretary of the Company, acting as Secretary thereof.

The purpose of the Meeting was stated by the Chairman.

Whereupon, the following resolution was introduced, and on motion duly seconded, was unanimously adopted, to wit:

WHEREAS, all claims and demands against the Alice Gold and Silver Mining Company have been fully satisfied, discharged and paid, and this corporation has disposed of all of its physical properties and business interests; and

WHEREAS, it is deemed to the best interests of the Stockholders of this corporation that the same be dissolved; Now, Therefore, be it

RESOLVED, that this corporation be dissolved as speedily as possible, and that a Special meeting of the stockholders of this corporation be called for the purpose of submitting a proposition to dissolve this corporation, said meeting to be held on Monday, the 8th day of May, A. D. 1911, at the principal office of said company, in the Utah Savings & Trust Building, in the City of Salt Lake, County of Salt Lake, State of Utah, at ten o'clock A. M. of said day, and that the Secretary of this Company be, and he is hereby, authorized and directed to prepare and mail to the several stockholders of this corporation a proper notice of said meeting, and to cause the same to be published in the Salt Lake Tribune, a daily newspaper published in the City of Salt Lake, County of Salt Lake, State of Utah, and a similar notice to be published in the "New York Times," a daily newspaper published in New York City, New York, for a period of at least three weeks prior to the date of holding the same.

BE IT FURTHER RESOLVED, that the transfer books of this Company close on Friday, the 21st day of April, A. D., 1911, at the hour of 3:00

o'clock P. M., and reopen on Tuesday, the 9th day of May, A. D. 1911, at the hour of 10:00 o'clock a. m.

There being no further business to come before said meeting, the same was, upon motion duly seconded and unanimously adopted, adjourned.

(Signed) JOHN D RYAN

(Signed) J. W. ALLEN

Chairman.

Secretary.

MINUTES of a Special Meeting of the stockholders of the ALICE GOLD & SILVER MINING COMPANY, held at the principal office of said Company in the Utah Savings & Trust Building, Salt Lake City, State of Utah, on Monday, the 8th day of May, A. D., 1911, at 10:00 o'clock a. m.

The following named stockholders, owning the number of shares of the capital stock of the company hereinafter set opposite their respective names, were present in person or represented through proxies filed with the secretary, to-wit:

E. S. Ferry in person				100 shares
F.S.Bascom by E.S.Ferry and L.O.Evans, proxies				122
Anna Kate Adams	"	"	"	25
Edith Adams	"	"	"	25
John A. Knapp	"	"	"	400
Edwin G. Wooley, Jr.	"	"	"	200
Caroline Adler	"	"	"	200
C. R. Agnew	"	"	"	200
Joseph W. Allen	"	"	"	115,098
Anna B. Bach	"	"	"	200
Simon Bank	"	"	"	10
Barnes Brothers	"	"	"	100

Helena L. Beebe by E. S. Ferry & L. O. Evans, prox.	200
E. H. Bennett (Est.)	200
Maier Berliner	300
Emily C. Berthet	1,400
Kate M. Blindauer	25
John Bogle	50
Meyer Gold	100
Corinne I. Clarke	10
Victor Day	200
Margaret C. Boyed	100
Charlotte A. Brown	75
Ernest W. Brown	3,800
Mabel Brown	20
Margaret Brown	20
Margaret C. Brown	15
William Brown (C) Jr.	20
Charles Buttrick	300
Stephen W. Carey	100
Ephron Catlin	200
William Chislett	250
John D. Clarke	100
Juliette F. Clarke	10
Alfred Clifford	500
W. L. Collins	42
Patrick Conlon	100
John J. Connley	25
N. N. Curtis (Est.)	500
The Daniel Inv. Co.	200
William Henry Dennis	50
John Douglas	100
Dennis Driscoll	200
Emanuel Eising	100

Rhoda Fuller by E. S. Ferry and L. O. Evans, proxies	100
Harry N. Eliassop	500
Charles Gehrmann	50
Stanley Gifford	4,500
David Goldberg	100
Milton F. Goodman	300
S. R. Graves	54
Annie E. Gunniss	200
Edward Haight	100
Ella B. Hall	25
W. L. Harper	100
Samuel Harris	1,000
H. J. Hayes	54
S. Heidelheimer	200
Ferdinand Hess	200
A. J. Huneke	100
H. Hobart Keeler	1,500
James Kirkpatrick	100
Walter C. Lewis	500
Lewisohn Brothers	1,200
W. F. Love	100
W. S. Owry	100
Mchael Lyons	100
A. D. McConishe	300
Thomas McHugh	100
Alice R. MacMillan	1,500
Morris Stembach & Co.	300
Newberg & Company	13,625
Thomas F. Oakes	300
Paine Webber & Co.	300
Mary Packer	10

Anaconda Copper Mining Co. et al. 671

Ada Phipps	by E. S. Ferry and L. O. Evans, proxies	100
Chas. N. Pollack	" " "	1,500
Edward Reimle	" " "	400
F. B. F. Rhodes	" " "	300
Mabel Rhodes	" " "	7
Francis T. Robinson	" " "	1,600
Frederick A. Robinson	" " "	1,600
Maria M. Robinson	" " "	1,800
Mary E. Robinson	" " "	25
Mary Elizabeth Robinson	" " "	1,800
Nathaniel Robinson	" " "	1,300
John D. Ryan	" " "	60,656
C. T. Shearer	" " "	50
Charles D. Spencer	" " "	350
Thomas Spencer	" " "	100
Frank S. Stevens (Est.)	" " "	500
A. C. Strong	" " "	100
W. D. Thornton	" " "	58,161
Elizabeth Tingle	" " "	200
Anne Turner	" " "	300
Christopher Turner	" " "	350
W. J. Valentine	" " "	100
William Wagner	" " "	100
Werner & Brown	" " "	600
Sarah W. West	" " "	163
Nathan Westheimer (Est.)	" " "	900
Mary White	" " "	20
Carl Willenberg	" " "	100
Chas. A. Wimpfheimer	" " "	1,000
Mattie V. Wooster	" " "	100

Annie D. Young by E. S. Ferry & L. O. Evans, prox.	100
John List Crawford " " "	2,000
James Brennan " " "	200
Pat Conlon " " "	100
E. I. Irvine " " "	25
Caleb Haley & Co. " " "	200
J. J. Flanigan " " "	200
L. M. Rumsey " " "	100
Samuel Stein " " "	10
Mina B. Sheley " " "	200
Maurice Ober " " "	750
Henry C. Frank " " "	200
P. Kunz, Jr. " " "	200
L. W. Lukach " " "	100
William Mass " " "	2,700
Frederick Numbaum " " "	300
F. C. Westervelt " " "	1,000
C. B. Van San " " "	300
A. J. Shores " " "	300
Harry S. Weil " " "	100
Marco J. Medin " " "	500
M. S. Largey by E. S. Ferry and Willard Hamer, proxies	100
J. R. Walker, in person	2,110
Peter Geddes by J. R. Walker, proxy	3,100
Eugene Blum, by W. J. Barret, proxy	400
Isaac Blum " "	1,600
Edward Blum " "	1,175
Isadore Bear " "	200
J. S. Bear " "	500
Alphonso Dryfoos " "	600

Anaconda Copper Mining Co. et al. 673

Dryfoos, Blum & Co. by W. J. Barret, proxy 400

Joseph C. Stettheimer " " 1,350

Total shares represented 310,963

It appeared that there were represented at the meeting, in person or by proper proxies, stockholders owning a total of 310,963 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than two-thirds of the entire capital stock of the Company.

The meeting was duly organized as follows:

On motion, duly made and seconded, Mr. E. S. Ferry was nominated and elected chairman of the meeting, 297,578 shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. E. S. Ferry acted as chairman of the meeting.

On motion duly made and seconded, Mr. L. O. Evans, a suitable person, was unanimously elected Secretary of the meeting.

The chairman thereupon announced that proof has been made by the affidavit of Mr. J. W. Allen, the secretary of the company; also by the affidavit of Blanche H. Newcomb, the principal clerk of the Salt Lake Tribune, a daily newspaper of general circulation, published in the City of Salt Lake, County of Salt Lake, State of Utah; and by the affidavit of Mr. Joseph F. MacDonald, the principal clerk of the New York Times, a newspaper of general circulation, published in New York City, New York, that notice of the holding of said meeting of the stockholders of said com-

pany had been duly given by mailing and publication to the stockholders of the company, as required by law.

Said affidavits were exhibited to the meeting, filed with the Secretary, and are respectively in words and figures as follows, to-wit:

State of New York,

County of New York, ss.

I, the undersigned, J. W. Allen, of Elizabeth, Union County, State of New Jersey, DO HEREBY CERTIFY:

That on April 17, 1911, I caused to be mailed to all stockholders of record on that date a copy of the circular letter attached hereto, and that I also, on April 24, 1911, caused to be mailed to such additional stockholders as of record on that date, a copy of the aforesaid notice.

WITNESS my hand this 1st day of May, 1911.

(Signed) J. W. ALLEN,

Secretary, Alice Gold & Silver Mining Company.

Subscribed and sworn to before me, this 1st day of May, 1911.

(Signed) MORRIS MEYERS,

Notary Public, N. Y. Co.

NOTICE OF SPECIAL MEETING OF
STOCKHOLDERS

of the

ALICE GOLD & SILVER MINING COMPANY.

To the Stockholders of the Alice Gold & Silver Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Sil-

ver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday, the 21st day of April, A. D. 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D. 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the Alice Gold & Silver Mining Company,

J. W. ALLEN, Secretary.

State of New York,
County of New York, ss.

JOSEPH F. MacDONALD, being first duly sworn, says: That he is the principal clerk of the New York Times, a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said Newspaper daily, beginning on the 14th

day of April, A. D., 1911, up to and including the 5th day of May, A. D. 1911.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May first, 1911, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the fifth day of May, A. D., 1911. Said notice above referred to, is as follows:

NOTICE OF SPECIAL MEETING OF
STOCKHOLDERS
of the

ALICE GOLD & SILVER MINING COMPANY.

New York, N. Y., April 12th, 1911.

To the Stockholders of the Alice Gold & Silver Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday the 21st day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D., 1911, at 10 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,

J. W. ALLEN, Secretary.

(Signed) JOSEPH F. MacDONALD.

Subscribed and sworn to before me, this first day of May, A. D., 1911.

(Signed) HUGH W. PARKER,

Notary Public, for the state of New
York, residing at Brooklyn, New York
(SEAL) City, N. Y. My commission expires
March 30, 1912. Notary Public, Kings
Co. Registered in New York Co.

State of Utah,

County of Salt Lake, ss.

Blanche H. Newcomb, being first duly sworn, says: That she is the principal clerk of the Salt Lake Tribune, a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 15th day of April, A. D., 1911, up to and including the 8th day of May, A. D., 1911.

Affiant further says that pursuant to said instructions she received the said notice, and that

the said notice has been published daily in the regular issue of said paper from the 15th day of April, A. D., 1911, to the 8th day of May, A. D., 1911, inclusive. Said notice above referred to, is as follows:

**NOTICE OF SPECIAL MEETING OF
STOCKHOLDERS**

of

ALICE GOLD & SILVER MINING COMPANY.

Salt Lake City, Utah, May 8th, 1911.

To the Stockholders of the ALICE GOLD & SILVER MINING COMPANY:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The Stock transfer books of the company will be closed on Friday, the 21st day of April, A. D., 1911, at 3 o'clock P. M., and remain closed until Tuesday, the 9 day of May, A. D., 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,

J. W. ALLEN, Secretary.

(Signed) BLANCHE H. NEWCOMB.

Subscribed and sworn to before me, this 8th day
of May, A. D., 1911.

(Signed) WILLARD HAMER.

Notary Public for the State of Utah,
(SEAL) residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

Thereupon, the chairman appointed Mr. L. O. Evans and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the secretary, and the said committee, after an examination of the said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the company, all of which were in regular form, and correct and satisfactory, representing 308,753 shares of the capital stock of the company, which said shares of stock, and the owners or representatives thereof, and the proxies representing the same, are hereinbefore spread upon the minutes of this meeting.

On motion, duly made and seconded and unanimously adopted, the report of the committee was accepted.

Thereupon, the said proxies were accepted and exhibited to the meeting, and, after examination, were filed by the secretary in his office.

The chairman then stated to the meeting the

purpose for which the same had been called, to-wit, to consider the question of the speedy dissolution of said company, and to vote upon the proposition as to whether the same should be dissolved.

WHEREUPON, the following resolution was duly presented to the meeting:

WHEREAS, all claims and demands against the Alice Gold & Silver Mining Company have been fully satisfied, discharged and paid, and this corporation has disposed of all of its physical properties and business interests; and,

WHEREAS, it is deemed to the best interests of the stockholders of this corporation that the same be dissolved;

NOW, THEREFORE, be it RESOLVED that said corporation, the Alice Gold & Silver Mining Company, be dissolved and that the Board of Directors of said company make application to the District Court of the Third Judicial District of the State of Utah, in and for the County of Salt Lake, for the dissolution of this corporation, to-wit, the Alice Gold & Silver Mining Company, and take all necessary steps, and do all things necessary and proper under the laws of the State of Utah, to secure the dissolution of this corporation and to cause a proper distribution to be made to the stockholders entitled to all of the assets and property of said corporation.

Upon motion duly made by Mr. L. O. Evans, and seconded by Mr. Willard Hamer, that the said

Anaconda Copper Mining Co. et al. 681

resolution be adopted, the following stockholders voted in favor of said resolution:

Stockholder	No. of Shares.
E. S. Ferry, in person, owning	100
F. S. Bascom, by E. S. Ferry and L. O. Evans, proxies	122
Anna Kate Adams	25
Edith Adams	25
John A. Knapp	400
Edwin G. Woolley, Jr.	200
Caroline Adler	200
C. R. Agnew	200
Joseph W. Allen	115,098
Anna B. Bach	200
Simon Bank	10
Barnes Brothers	100
Helen L. Beebe	200
E. H. Bennett (Estate)	200
Maier Berliner	300
Emily C. Berthet	1,400
Kate H. Blindauer	25
John Bogle	50
Meyer Gold	100
Corinne I. Clarke	10
Victor Day	200
Margaret C. Boyed	100
Charlotte A. Brown	75
Ernest W. Brown	3,800
Mabel Brown	20
Margaret Brown	20
Margaret C. Brown	15
William C. Brown, Jr.	20
Charles Buttrick	300

Stephen W. Carey by E. S. Ferry and L. O. Evans, proxies	100
Ephrom Catlin	200
William Chislett	250
John D. Clarke	100
Juliette F. Clarke	10
Alfred Clifford	500
W. L. Callins	42
Patrick Conlon	100
John J. Connley	25
N. M. Curtis (Estate)	500
The Daniel Inv. Co.	200
William Henry Dennis	50
John Douglas	100
Dennis Driscoll	200
Emanuel Eising	100
Rhoda Fuller	100
Harry H. Eliassop	500
Charles Gehrmann	50
Stanley Gifford	4,500
David Goldberg	100
Milton F. Goodman	300
S. R. Graves	54
Annie E. Gunniss	200
Edward Haight	100
Ella B. Hall	25
W. L. Harper	100
Samuel Harris	1,000
H. J. Hayes	54
S. Heidesheimer	200
Ferdinand Hess	200
A. J. Huneke	100
H. Hobart Keeler	1,500

Anaconda Copper Mining Co. et al. 683

James Kirkpatrick by E. S. Ferry and L. O. Evans, proxies	100
Walter C. Lewis	500
Lewisohn Brothers	1,200
W. F. Love	100
W. S. Owry	100
Michael Lyons	100
A. D. McConishe	300
Thomas McHugh	100
Alice R. MacMillan	1,500
Morris Sternbach & Co.	300
Newberg & Company	13,625
Thomas F. Oakes	300
Paine Webber & Co.	300
Mary Packer	10
Ada Phipps	100
Clas, N. Pollak	1,500
Edward Reimel	400
F. B. F. Rhodes	300
Mabel Rhodes	7
Francis T. Robinson	1,600
Frederick A. Robinson	1,600
Maria M. Robinson	1,800
Mary E. Robinson	26
Mary Elizabeth Robinson	1,800
Nathaniel Robinson	1,300
John D. Ryan	60,656
C. T. Shearer	50
Charles D. Spencer	350
Thomas Spencer	100
Frank S. Stevens (Est.)	500
A. C. Strong	100

W. D. Thornton	by E. S. Ferry & L. O. Evans, attors.	58,161
Elizabeth Tingle	" "	200
Anna Turner	" "	300
Christopher Turner	" "	350
W. J. Valentine	" "	100
William Wagner	" "	100
Werner & Brown	" "	600
Sarah W. West	" "	163
Nathan Westheimer (est)	" "	900
Mary White	" "	20
Carl Willenberg	" "	100
Chas. A. Wimpfheimer	" "	1,000
Mattie V. Wooster	" "	100
Annie D. Young	" "	100
John List Crawford	" "	2,000
James Brennan	" "	200
Pat. Conlon	" "	100
E. I. Irvine	" "	25
Caleb Haley & Company	" "	200
J. J. Flanigan	" "	200
I. M. Rumsey	" "	100
Samuel Stein	" "	10
Mina B. Sheley	" "	200
Maurice Ober	" "	750
Henry C. Frank	" "	200
P. Kunz, Jr.	" "	200
I. W. Lukach	" "	100
William Mass	" "	2,700
Frederick Missbaum	" "	300
E. C. Westervelt	" "	1,000
O. B. Van San	" "	300
A. J. Shores	" "	300

mously adopted, the said meeting of the stockholders of said company was adjourned.

(Signed) EDW. S. FERRY.

(Signed) L. O. EVANS Chairman.
Secretary.

State of Utah,

County of Salt Lake, ss.

E. S. FERRY being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the Stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company, in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D., 1911; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) EDW. S. FERRY.

Subscribed and sworn to before me this 9th day of May, A. D., 1911.

(Signed) WILLARD HAMER,
Notary Public for the State of Utah,
Residing at Salt Lake City, Utah.
My Commission Expires May 16, 1913.

State of Utah,

County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me,

WILLARD HAMER, a Notary Public, in and for said County and State, personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of Special meeting of the stockholders of the Alice Gold & Silver Mining Company, as Chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

(Signed) WILLARD HAMER,

Notary Public for the State of Utah,

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

State of Utah,

County of Salt Lake, ss.

L. O. EVANS, being first duly sworn, says upon oath: That he is the person who acted as secretary of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D., 1911; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting. (Signed) L. O. EVANS.

Subscribed and sworn to before me, this 9th day of May, A. D., 1911.

(Signed) WILLARD HAMER,

Notary Public for the State of Utah,

Residing at Salt Lake City, Utah.

My Commission Expires, May 16, 1913.

State of Utah.

County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me WILLARD HAMER, a Notary Public in and for said County and State, personally appeared L. O. EVANS, known to me to be the person whose name is subscribed to the foregoing minutes of special meeting of the stockholders of the Alice Gold & Silver Mining Company, as secretary thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

(Signed) WILLARD HAMER,

Notary Public for the State of Utah,

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

WE, the undersigned stockholders, and proxies and representatives of stockholders of the Alice Gold & Silver Mining Company, present at the Special Meeting of the stockholders of said Company, held on the 8th day of May, A. D., 1911, hereinbefore recorded, do hereby certify that the fore-

going minutes of the said meeting are full, true and correct; and we, and each of us, did, at such meeting, and hereby do, concur in each and all of the resolutions and proceedings in said minutes recorded.

IN TESTIMONY WHEREOF, we have this..... day of May, A. D., 1911, hereunto subscribed our names and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

(Signed) E. S. FERRY

Owning and representing 100 shares

(Signed) L. O. EVANS }

Representing 297,-

(Signed) E. S. FERRY }

478 shares by proxy

(Signed) WILLARD HAMER Representing 100 shares by proxy

WE, your committee appointed to examine and report upon the proxies submitted to the Special Meeting of the Stockholders of the Alice Gold & Silver Mining Company, at its meeting on May 8, 1911, hereby report that we have examined all of such proxies, and we find that there has been filed with the secretary proxies from the stockholders of the company, representing 308,754 shares of the capital stock of the company. Said proxies so examined are herewith returned with this report.

(Signed) L. O. EVANS

(Signed) WILLARD HAMER

Committee.

[Testimony of Isaac Blum, for Complainants.]

Deposition of ISAAC BLUM, a witness called in behalf of the complainants, being by the Commis-

sioner duly sworn, testified in substance as follows:

Direct Examination:

My name is Isaac Blum. I am one of the parties to this action. Well, offhand I forget how much stock I own in the Alice. About fifteen or sixteen hundred. I don't remember just exactly. I mailed a registered letter to the Board of Directors of the Alice Company, Salt Lake City, prior to the meeting of May 27, 1910, objecting to the sale and transfer of that property to the Anaconda and asked them to read this letter and record my objection on the minutes, and to notify me that they would comply with my request.

By MR. WALSH: Please mark this letter.

(Letter referred to marked Complainants' Exhibit OO, October 9th, 1913).

Complainants' Exhibit OO is a letter I received in answer to my communication. I called on Mr. Allen when I received that letter and I told him I had some grievances, and he said, Mr. Kelley, the attorney, would be here shortly, and when he came he would notify me. He sent me a telegram. I did not expect any telegram.

MR. WALSH: Mark that, please.

(Paper referred to marked Complainants' Exhibit PP, October 9th, 1913).

Complainants' Exhibit PP is the telegram that I received. I called in accordance with the suggestion of the telegram, and I met Mr. Kelley, and had a conversation with him at that time. I asked Mr. Kelley first, I said, "Do you represent the

Alice?" He said, "No." He was the Attorney for the Anaconda. I wanted to know what interest he represented. He said the Alice had no litigation heretofore, and I am of the opinion he said he is looking after the Alice matters. I told him that I considered it a high handed piece of business for the directors when they received a communication of an objection to refuse to record it. I told him I did not send him a proxy, I sent him a letter, and that they were my trustees, as I took it, and he began to explain to me about the Apex law out there. He said it would cost millions in litigation. And I said, "Well, then, it is quite a strategical position, and it is worth a lot of money for that account." And later on he said to me the Federal Government was also opposed to holding companies, and consequently they changed it into a mine. I then insisted about an answer, whether my objection held good, and he said "I should say your objection is good."

Cross Examination:

I could tell whether I owned fifteen hundred or sixteen hundred shares if I looked it up. I cannot recollect offhand. I should say I bought my first stock about 1905 and 1906. Well, it was bought in lots, as near as I could get it. I bought some from Werner and Broun. It was bought in a firm I was in, after which we dissolved and I took my pro rata interest. I think we had at that time about fifty-three hundred shares. That was bought at different times as we could secure it. I had an interest in it. I had twenty-five per cent interest in

all that was bought. I did not have charge of buying it. My partner attended to it. I bought some, but my partner bought most of it. The name of my partner was William Maas. He is living. He lives on 85th Street. I think his number is 38 West. I knew at the time it was bought it was going to be bought for the firm. I think to the best of my recollection we paid as high as five dollars a share, and we may have paid more, but five dollars I am quite positive. I think the stock that we paid five dollars for was bought from Werner and Broun or A. Sartorius. I think the last we bought was four hundred shares at five dollars. It may have been in 1905 or 1906. I believe the last was 1906, four hundred shares at five dollars to the best of my recollection. That can be traced from records if necessary. I think that was bought either from Werner and Broun or A. Sartorius. You know that stock was rather scarce. It was not very easy to buy. As to my means of verifying whether it was bought from Werner and Broun, I believe they would very likely give me a memorandum of it. Well, we retired in 1906, and I do not think the books are in existence any more. It is over seven years. I have not seen them in three or four years. Our firm was in existence for twenty-five or thirty years and I had some of the prior books which when I moved away were destroyed, books that were fifteen and twenty years old, some of them. The last books I did not have in charge any more. My brother had the last books, nevertheless, I

wish to say the books would not show that, because we merely credited the statement of debit and credit; did not itemize the stock. If we bought one hundred shares of Alice stock the books would not show it. It would merely show the debit and credit of the total of the statement. We bought some other stocks and some securities, and we had a stock and bond account, but did not itemize it; each item that was bought; merely a debit and credit. I had a memorandum of the stock that I actually invested in as a firm. I didn't know exactly what they cost. If I was buying a thousand shares of Alice stock I knew whether it cost five dollars or four dollars a share, or a dollar and a half. My books and my balance sheets would not show it. The debit and credit of the statement would appear in the books,—the statement of Werner & Broun, or, if it were A. Sartorius it would be debit and credit; it would not say the item. As to our own firm books, they would not show every investment that the firm made. Well, I don't think they are very modern bookkeeping; it was merely a credit and debit of the total amount of stocks which we carried. We were in the manufacturing of leather goods. We had an investment account, but that investment account would not show what was in investment. We could not tell by looking at our books what our investments consisted of. We would not know, if we disposed of those shares, whether we had a gain or a loss on our account except we took the entire stock of our securities on hand. I

was not the senior member of the firm. The other members of the firm were William Maas and Edward Blum, who is older than me. We dissolved I should say in December 30, 1906 or January 1st, 1907. The division of the Alice stock was made at that time. I got some shares afterwards. There were a couple of hundred shares which a sister of mine had which I put in my name. She was influenced in buying that stock through my saying so. I guess the firm bought it and handed it over to her, but I cannot tell you the date. I think her stock cost us \$3.80 as near as I remember. I think so. Well, as it was at my influence she bought that stock, and it was my duty to protect her in this transfer if she consented, and she did. That stock was not in her name. It was in some name, not in her name at that time so instead of transferring it to her name, I transferred that stock into mine, come to think of it. I did not pay her any money at that time. I bought this stock for the firm's account. I have not bought any since the firm—I have not bought any except I got my division; that is, since the firm dissolved December 30, 1906. I could not say that it was all bought within about a year. It is just from memory that I know we paid as much as five dollars a share. We separated the stock which was on hand. There was a memorandum of what we had in a little book. The little book did not show the gross amount; it showed perhaps so many shares, bought at such and such a price for the partners. I don't know what has become of that

book for the simple reason that we had 5200 shares of Alice; the senior partner got, for example, 2600 shares and I got 1300 shares, and my brother got 1300 shares, something like that. He had fifty percent interest and the others had twenty-five percent interest. I should say in 1904 or 1905 we commenced buying the Alice stock. That was after we had heard that Mr. Ryan had taken an option on the majority of the stock. When it became known that Mr. Ryan had exercised his option acquiring the majority of the stock, it was certainly thought that the stock was a good speculation. It went up afterwards. I think as high as nine and a half a share to my knowledge. **Yes,** I did know something myself at that time about the property. I never visited it. I had information that it was a very valuable piece of property. A party by the name of Nathan Westheimer, who is deceased, told me that Adolf Lewisohn, senior member, told him it was the most valuable piece of property in Butte, and it had more copper in it than any other mine there. Nathan Westheimer died about 1905 or 6, I guess. I don't know where he lived. He was a mining man. I guess he had an office. He was the President of the Standard Consolidated Mining Company, which is at Bodie, California. My brother is in this litigation. I don't know about my partner, Mr. Maas. My brother may have those partnership books. I will ascertain where the books are and produce that little book that I referred to. I am not a party to any other stockholder suits now pending. I

objected to the Butte Coalition because I considered it wrong that the directors should go to work and exchange the assets in the treasury of Red Metal and Alice for Anaconda and then give you what they chose to the minority stockholders. In other words, I objected to the dissolution of the Butte Coalition Company, and I was about the only stockholder out of the million shares, and that is my privilege. I told Mr. Kelley if I wanted to buy Anaconda stock, it is in the market there for me to buy. He didn't need to give me what they choose to give me. At that time I had seventy-five shares of Butte Coalition stock,—Seventy-five shares out of a million. I considered my seventy-five shares for my money just as important as the man who controls it. I am perfectly satisfied to be the only man who objected to the dissolution.

Re-Direct Examination.

Mr. Baer here is a friend of mine only since this litigation. I did not know him prior to the time the litigation commenced. Well, in 1906, I should say I acquired some of this Alice stock. I purchased some at the sale of the assets of the Montana Zinc Company. There was an auction sale on the holdings of the Montana Zinc Company of seventy-five hundred shares, and I attended that sale. That was conducted at Adrian Mullers Auction Room here in New York City, and the market price at that time—that was in a panicky year—was \$1.80, and I bid for the stock up to \$1.80, and Mr. Dudley of the Butte Coalition Company

bought that stock and bid against me, bought it for the interest of the Butte Coalition Company, because as far as I know he is only a clerk. I bid up to \$1.80 and then I let it go. He bought it all. The sale was not confirmed. When the sale came up for confirmation it was sold to Albert Friese for \$2.26, and I got a portion of it, one thousand shares. Mr. Friese bought for himself and for me and some others. I got one thousand shares. Who the others were I don't know, and this stock was immediately taken up by Newborg & Company at \$3.00 a share. I think that was in April, 1910. One of the partners of Newborg & Company asked for an introduction, that he was anxious to meet me. He wanted to acquire my stock, and offered me five dollars a share for it. I think it was shortly prior to the time the Amalgamated sent out the circulars that they would take over the stock.

Re-Cross Examination.

When I was asked about my purchases, I forgot about that one thousand shares. It was a transaction over night. I paid \$2.26. I got three dollars for it right away. It is not in these shares here. I did not consider it in these holdings. You did not ask me, you know. It does not appear in these holdings. I sold that to the party who bought it, Mr. Freese. I had one thousand shares interest in it, told me that he had an offer for the entire lot at \$3.00 a share, and that they were going to sell, and he supposed I would act with the majority, and I said I would. Mr. Freese has an office, I be-

lieve at 25 Broadway. He spells his name F-r-i-e-s or F-r-e-i-s, Albert. He is now the President of the Standard Consolidated Mining Company, the Standard Consolidated, I think, they call it. The 7500 shares were sold at public auction at \$1.80 the same day that the announcement came out that the Anaconda would make the proposition to exchange the stock. I came from the auction room, and that announcement—I saw that the Anaconda had made that announcement.

(Witness Excused).

(The Exhibits referred to in the testimony of witness, Blum, are respectively, as follows:)

Complainants' Exhibit "OO."

RICHARDS, RICHARDS & FERRY

Counselors at Law

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry

May 27th, 1910.

Mr. Isaac Blum,

38 East 81st St.,

New York City, New York.

Dear Sir:—

Your favor of the 20th inst., addressed to the Board of Directors of the Alice Gold and Silver Mining Company was received by me as resident director. As you enclosed no proxy and were, therefore, not represented at the special meeting of the stockholders held this day, it was impossible to have your letter spread upon the minutes.

For the same reason, your vote was recorded neither for, nor against, the proposition of sale outlined in the notice sent to you.

Your letter has been referred to the Secretary of the Company at New York City, for submission to the Board of Directors.

Yours very truly,

(Signed) EDWARD S. FERRY.

Complainants' Exhibit "PP."

THE WESTERN UNION TELEGRAPH COMPANY.

SEND the following message subject to the terms on back hereof, which are hereby agreed to
June 2, 1910.

CONFIRMATION

Isaac Blum,

Cedarhurst, Long Island.

If you will call at my office tomorrow morning at ten you can interview Mr. Kelley.

J. W. ALLEN.

[Testimony of Thomas W. Lawson, for Complainants.]

THOMAS W. LAWSON, a witness called on behalf of the complainants, being first duly sworn, testified in substance as follows:

My name is Thomas W. Lawson and I reside at Winchester, Massachusetts. I am a farmer, an author, a banker. I was engaged in the brokerage business in the year 1899 and theretofore. In the pursuit of that business I was engaged in buying and selling mining stocks. I had some part in the original organization of the Amalgamated

Copper Company. In the work of organizing that Company, I was associated with the late Henry H. Rogers and Albert C. Burrage. The Company was organized in the month of April, 1899; I should say from memory that I had been conferring and negotiating with those gentlemen and others for three years before that time. Upon the organization of that Company, there was turned over to it, a controlling interest in a number of mining corporations; the stocks of which were acquired from the promoters of the Company. I had a part in the purchase of some of the stocks, which were thus eventually transferred to the Company on its organization. The particular companies whose stocks we were actively engaged in securing immediately prior to the organization of the Amalgamated, I should say were the Anaconda, Boston & Montana, Butte & Boston and the Parrot. Speaking generally, our plan was this: We intended to purchase the controlling interest in certain producing copper mining companies those I have particularly named and others. I distinguish between the two because we did purchase some and abandoned the purchase of others, the purchase of which was contemplated at the beginning. Our intention was to put them into a consolidation, amalgamation,—into some larger holding corporation to be organized later, for the purpose of more advantageously and profitably conducting the copper business; conducted separately at that time by the different companies we were to absorb, or hoped to absorb. Other

companies we intended to absorb were the Calumet & Hecla, and Osceola, and some properties of which I cannot recall the names, controlled or owned by Senator Clark at Butte; and some other copper companies in the Lake Region; also the Arcadia and Isle Royale. The advertisement in the Boston Herald of May 8th, 1899, over my signature contained the following statement:

"The Amalgamated Copper Company is the company into which is to be merged all sound producing copper companies that are now paying and after close investigation prove good and will pay in the future over 8 per cent. on the par value of the stock which the Amalgamated Company issues."

It accurately states the purpose as it was developed in the course of my negotiations with my associates. I do not believe we intended at that time to purchase the United Verde if we could have purchased, we would have been very glad to get it, but we feared at that time we would not be able to purchase the property from Senator Clark. Generally speaking the plan contemplated the acquisition of all producing copper mines in this country, which we might be able to purchase upon any reasonable terms. We intended to purchase all of the stock of each company, in which we could purchase a controlling interest, if it were possible and feasible. I think we also talked of acquiring the Rio Tinto. In the article which appeared in "Everybody's" for the month of October, 1914,

written by me, there appears the following statement:

"In 1896 I formulated and perfected the plans for 'Coppers,' a broad and comprehensive project having for its basis the buying and consolidating of all the best producing copper properties in Europe and America, and educating the world to their great merits as safe and profitable investments;" which states succinctly the plan which I had in mind. A fair statement of our purpose appears in the New York "Sun" of April 28, 1899, in the article headed "Here's the Copper Pool," as follows:

"The copper combination materialized yesterday. The new company will combine nine copper mining companies. Its purpose will be so far as possible to give stability to the copper market. It is not proposed to advance prices but rather to prevent an undue advance as by keeping the prices upon a fair basis it is believed that the demand for the metal will be fostered and the profits of the company be all the greater. Economies in the business will be instituted."

I know about the United Metals Selling Company. It was organized about the same time or shortly after. The principal business was the old copper selling agency business of the Lewisohns. Their business was taken over I think as a whole and it was made the basis of the new selling agency. This company had contracts with a number of the larger producing copper mining companies, contracts to sell their metal for them

—finance them during the selling of it, give them credits, and in a general way what is known as the copper selling agents business, charging a commission for the work done. I think the Amalgamated Copper Company became the owner of some stock—the controlling interest—in the United Metals Selling Company. Subsequently I think it acquired all of it. The organization of the United Metals Selling Company was in contemplation at the time the organization of the Amalgamated Copper Company, as a part of a general scheme to market the copper to a finality. My article in “Everybody’s” heretofore referred to, states the case, the conditions, about as they were as follows:

“On the board of directors, too, was Governor Flower of the financial and brokerage house of Flower & Company, who had acted as fiscal agents for the corporation at its formation, nor must I forget the Lewisohn Brothers who had been induced to turn in all their copper business at actual cost to be incorporated in the United Metals Selling Company, a part of the Amalgamated scheme but not included in the corporation, and every one of these had elaborate assurances that he was in on the cellar floor.”

As regards the reason for acquiring the selling agency, I will say that in the carrying out of our general scheme, the general scheme which was contemplated all the way through, it would have been very essential to have the marketing of the whole product of the different mines controlled

or owned by the consolidated company, as the very foundation idea of the whole scheme was the control of the price of the metal, control to an extent that we could keep the price from the wild fluctuations that had been the history of copper metals from the beginning. In other words, a control that would have enabled us to establish a fair price and to hold that fair price through the ups and downs of general business, through the periods when the metal would be in strong demand, when the demand would let up, and there would be accumulation or overproduction, a temporary over production, and the very essential of that would be a control in the sense which I stated, of the selling, of the getting the metal to the consumer. The original acquisition of its assets by the Amalgamated did not include any of the stock of the Butte and Boston or the Boston-Montana, but we had, prior to its organization, secured a considerable amount of the stocks of these companies for the people who were organizing the Amalgamated. At that time in Montana, the management of the Butte and Boston and Boston-Montana was harmonious with the management of the Amalgamated. The reason that the Amalgamated did not acquire immediately upon its organization the stocks of these two companies was that in the beginning and up to within a comparatively short time of the organization of the Amalgamated company, we had intended to have the Boston and Montana, and Butte and Boston stocks the first stocks to be absorbed, but in the mean

time Mr. Rogers had been able to acquire from Mr. Marcus Daly the control of the Anaconda property, which had not been originally contemplated, or the control of which had not been originally contemplated, until after the Boston-Montana and Butte and Boston had been arranged for; and that would necessitate a larger amount of capital at the start, than Mr. Rogers and Mr. Rockefeller and some of our associates thought was advisable, so in a general way it was decided to bring the contemplated amalgamated property to the public in sections, and what was to have been the first section was shifted to the second, so that in the first section could be included this large amount of Anaconda. They had secured a control of the Butte property. They had not purchased the control of the Boston-Montana, but could speak for the control of it—options in some cases, and friendly relations with the larger holders in others. In 1899 there were being operated in the Butte camp what were known as the Heinze properties. Mr. Heinze's litigation was with the Boston and Montana people originally, that is in the formation of our plans we intended to take over the mines controlled by what is known as the Bigelow people, and we looked upon their property as the Boston-Montana, and Butte and Boston, and some others and were not familiar at that time with what afterwards became the extensive ramifications of Heinze's claims on certain of those properties; so that it lay with us that if we could get the Bigelow properties and Boston-Montana

and Butte and Boston, it would be as far as we could go; but it developed that Heinze's claims ran into the very stomach of the Boston-Montana and Butte and Boston. That time we did not attach very much importance to the Heinze interests. I remember the advertisement which you call to my attention, appearing on page 5 of the Boston "Herald," under date of Saturday, April 29, 1899, headed "Amalgamated Copper Company" and concluding "National City Bank of New York, James Stillman, President, 52 Wall Street, New York." I wrote and inserted the advertisement in the "Herald." That advertisement likewise appeared in the New York "Sun," under the same date, April 29, 1899. I think I wrote that advertisement myself. I think it was the suggestion of Mr. Rogers, Mr. Rockefeller and Mr. Burrage. The leading spirit or master-mind in the effecting of the consolidation of which we are speaking was Mr. Henry H. Rogers. He became interested upon my suggestion. I had talked with him about the matter for several years.

MR. WALSH: We offer this in evidence, and will call it "Plaintiffs' Exhibit 1," for convenience of reference.

(The exhibit referred to is in words and figures, as follows:)

Which said offer, and the receipt of the same in evidence, was objected to by the defendants, upon the ground that there was no evidence that James Stillman had any authority to insert said advertisement; said objection was overruled by

the court, to which ruling the defendants excepted.

Exhibit 1.

(From the Boston Herald, Saturday, April 29, 1899, page 5.)

"AMALGAMATED COPPER CO.

Capital.....\$75,000,000.

This Company is organized under the laws of the State of New Jersey for the purpose of purchasing and operating copper-producing properties. Its capital is \$75,000,000, divided into 750,000 shares of common stock, of the par value of \$100 each. It has no bonds or mortgage debt.

This Company has already purchased large interests in Anaconda Copper Company, Parrot Silver & Copper Company, Washoe Copper Company, Colorado Smelting & Mining Company, and other companies and properties.

MARCUS DALY, Pres.,

H. H. ROGERS, Vice-Pres.,

WM. G. ROCKEFELLER, Sec'y & Treas.

New York, April 28, 1899.

OFFER FOR PUBLIC SUBSCRIPTIONS.

Referring to the foregoing statement of the Amalgamated Copper Company of New Jersey, notice is hereby given that offers for subscription to 750,000 shares of the par value of \$100 each of the stock of the said copper company will be received at the National City Bank of New York, un-

til twelve o'clock noon, Thursday, May 4, 1899, at the rate of \$100 per share.

Subscriptions must be addressed to the said bank and accompanied by a certified check to its order for 5 per cent of the amount of such subscription, the balance to be payable within 10 days after date of notice of allotment.

Temporary negotiable receipts on payment of sums due on allotment will be issued, exchangeable for certificates of stock, as soon as same can be engraved.

In case of over-subscription, allotment will be made pro rata. The right is reserved, however, to reject any subscription.

New York, April 28, 1899.

National City Bank of New York,

James Stillman, President.

52 Wall Street, New York."

The same advertisement appears in the Boston "Herald" of date May 1, 1899; likewise in the issue of May 2, 1899; and in the next column immediately adjacent thereto appears an advertisement over my own signature.

MR. WALSH: We offer in evidence now a Law-son advertisement appearing in Column 2, on page 4 of the "Herald" for Tuesday, May 2, 1899, which we will refer to as "Exhibit 2."

Which said offer, and the receipt of the same in evidence, was objected to by the defendants, upon the ground that the same was incompetent, irrelevant and immaterial; that the same was hearsay,

and that the same did not appear to have been inserted in any paper upon any authorization from the Amalgamated Copper Company, which said objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

(Said Exhibit 2 was in words and figures following:)

Exhibit 2.

(The Boston Herald, Tuesday, May 2, 1899,
Page 4.)

"COPPERS.

AMALGAMATED SUBSCRIPTION.

Owing to the very large number of inquiries (over 3,000 the first day) received and anticipated, as to the best means of securing an allotment of the first issue of the consolidated stock, it is necessary to reply collectively by this advertisement. I advise the purchase of Amalgamated by subscription, because it is, in my opinion, the best opportunity ever offered the public for safe and profitable investment. It is probably the first time in the history of public subscriptions that a stock is worth and can be sold for 50 to 75 per cent. more than the subscription price, and yet will be allotted to each and every subscriber in proportion to his application. This means that everyone who makes a bona fide subscription, large or small, will receive shares at \$100 each that can be sold at once at a large profit.

In my opinion the entire \$75,000,000 is worth and can be sold today for from 30 to 60 per cent. more than the subscription price.

First—Because the assets now owned by the Amalgamated Company are worth from \$100,000,000 to \$125,000,000.

Second—Because the Amalgamated Company is now earning at the rate of 12 to 16 per cent. per annum.

Third—Because it will, from the start, and always after, pay 8 per cent. dividends annually.

Fourth—Because the interests actively engaged in its management will make and keep it one of the most conservative and sought-for investments.

Fifth—Because there will be rights attaching to it almost at its beginning that will give to it large profits independent of those accruing from its dividends.

The fact that the above values are now known to some, and will be in the next few days recognized by all, will cause the stock to be largely oversubscribed, but this should deter no one from subscribing, for the reason that, notwithstanding this certainty, those who are engaged in perfecting this great enterprise have decided that, instead of a favored few being allotted the entire amount, all shall be treated alike. Captious critics of "Coppers" will probably again cry their sarcastic "philanthropy," but to the legion of broad-minded investors who have followed and profited by this great industrial revolution the policy of this liberal treatment will be obvious—the Consolidated Com-

pany is to be many times larger than its present capital indicates; it, in my opinion, will from time to time offer to the investing public large amounts of increased stock for the purpose of obtaining hundreds of millions of cash with which to pay for all the producing copper mines, as it is now obvious to students of affairs financial that this company must in time become the owner of all good mines, because all such mines can be run to better advantage to the consumer of copper, the investor in copper stocks and the present owners, by the Amalgamated Company than by others. This being so it requires no supernaturally bright mind to see the wisdom of a policy that insures a constantly increasing premium for every new issue of stock.

I advise all intending subscribers to send their subscriptions personally, or through their banking or brokerage house, direct to the National City Bank of New York. While my firm will, for the convenience of its clients, forward subscriptions, I would have it understood that such subscribers will receive the same treatment if they send their applications direct.

My firm will also furnish subscription blanks to those who, through lack of time or otherwise, cannot secure them elsewhere.

All subscribers should bear in mind, if on receiving their allotment they are disappointed with the amount, that their subscription is only reduced in the same ratio as all others, and that they have the

pledge from a board of directors whose personnel means good faith.

In advising the purchase of "Amalgamated" I call attention to the names of the men who are to conduct it to a future, and to the fact that from its inception it will surely give a return of over 8 per cent. per annum on its par.

THOMAS W. LAWSON.

May 1st, 1899.

NOTICE.

Since contracting for the publication of the above, I find, owing to the overwhelming number of subscriptions with accompanying checks to my order or that of my firm and the unlooked for amounts of same, I am compelled to give notice to all who are desirous of subscribing through us that we will not, after today, accept their subscription, and advise that they make same direct to the National City Bank of New York.

I regret being compelled to refuse, particularly our own clients, our aid in securing allotments, but feel sure they will understand my position.

I again repeat, every subscriber will receive the same treatment by applying direct to the National City Bank of New York, as he will through anyone connected with the enterprise. We will furnish subscription blanks on application.

THOMAS W. LAWSON.

May 2, 1899.

LAWSON, WEIDENFELD & CO.

Bankers and Brokers.

New York.

Boston.

Members New York Stock Exchange."

The same advertisement by the National City Bank and myself appear in the issue of May 3, 1899, being a duplicate of the day before. I tried to keep myself well informed concerning the production of the principal producing copper mines of this country, and particularly those at Butte. The statement appearing in the New York "Times" under date of April 27, 1899, that "The Butte camp produces 36 per cent. of the world's copper, or about 220,000,000 pounds" conforms fairly well to my recollection of what the production of the Butte camp was. That statement continues "The production of the Butte camp is now approximately as follows: Anaconda, 120,000,000; Boston-Montana, 63,000,000; Butte and Boston, 12,000,000; Colorado Smelter, 10,000,000; Parrot, 15,000,000; total, 220,000,000." That conforms to my recollection of what was the production of the Butte camp. The article continues "Besides the above property, which will probably go into the copper combination capitalized at over 200,000,000, there is the M. O. P. and the Clark Smelter, but the production of the entire mountain is under 250,000,000 pounds per annum." In a general way that statement accurately represents the facts as I now recall them. In a general way I am familiar with a work called

"The Truth About Trusts," by Moody. Under the head of "Analysis," speaking of the Amalgamated Copper Company, it states:

"While the result turned out far otherwise, in the original plan both judgment and sanity prevailed, for it was purposed not merely to form a combination of a few of the larger producers embracing a copper production of only about 150,000,000 pounds per annum out of a total of about 1,200,000,000 pounds as the world's production, but to logically proceed from this nucleus to a much larger trust which would first perhaps take in the United Verde, Calumet & Hecla, and every large copper mining interest in this continent and extend ultimately to other continents, embracing the Rio Tinto properties of the Rothchilds as well as all other important producers. In the carrying out of these plans it was estimated that to acquire approximate control of the entire copper production of the world, about 1,200,000,000 pounds per annum, would involve the issuance of an approximate share capital of \$1,200,000,000, thus capitalizing copper production at the rate of one dollar for each pound of copper produced. The original formation of the trust was, therefore, based on a sound proposition from the standpoint of its promoters and on the only broad rational basis, that any trust that contemplates the issuing of watered capitalization in large amounts can be based on, and be successful. It aimed at and saw the necessity for acquiring a monopoly of the copper production of the world, the purpose being to restrict

the production to what might be the legitimate at about twenty-two cents per pound."

That is a fair statement of facts, with quite a decided stretching, perhaps, of conclusions. I do not agree with the trust,—where they bear down on the trust end and the restrictions, etc., as I think they are wrong there. We did intend to capitalize the copper of the world on about a dollar a pound basis, which we believed to be a fair one, and I believe so yet. Capitalization on that basis could scarcely be stigmatized as water capitalization, but just the opposite. That is where I disagree with them. I don't think there would be, fairly speaking, any water in it. If I may express an opinion along those lines, when I took the project to Mr. Rogers and Mr. Rockefeller at the beginning and stated to them in a broad way what my ideas were, and how I had worked it out in a lifetime's association with copper mining production, selling and consumption, I stated to them briefly this: There is so much copper, one of the foundation necessities of civilization, in the ground. It cannot be added to. It is a reserve storehouse for the future, and it has from the beginning,—as the business has been conducted from the beginning,—we have well authenticated reports going back three thousand years, to this Rio Tinto, one of the greatest copper enterprises in the world that has been going continuously for three thousand years, so that we have probably the best, the most reliable and authentic history of any industry in the world. And I stated to them that from the begin-

ning the business has been conducted in a haphazard sort of way. When the world's demands were in excess of the production, copper would go to fairly high prices. When the world's demands slackened, it would go to disastrously low prices. Now, I said, if we can form a fair combination, a combination that will be fair from the legal and moral standpoint, that will contemplate the taking care of the consumer as well as the producer and by acquiring all the copper that is now in these natural storehouses, and then find out what the fair price of producing it is, how much we are eating into our capital, looking to the ultimate exhaustion of the storehouses, and that price will give us—will give the purchasers at today's selling price of these properties a fair return and from two hundred to four hundred per cent. inflation, if "inflation" is a fair word. That is, the investment of \$300,000,000 will give us from eight to twelve hundred million of good sound value. In other words, I mean to convey the idea that if we were thus able to consolidate the properties, they would immediately have a value far in excess of what they had, severed as they were. That is it exactly and from 200 to 400 per cent. of our investments so soon as we had informed the world of the actual conditions, so that in the sense of the ordinary trust, we were working upon a directly opposite method of procedure. We were contemplating showing our hand to the maximum for the profits, where the ordinary trust depends upon the concealment of facts. There was no benevo-

lence to it, it just happened that this peculiar industry, which stands alone in all the industries of the world,—there is nothing like it,—the more you go into it the more sure you are that copper stands out alone. We have raked and scraped the earth's surface and we know what we have to deal with; and here was a peculiar condition of affairs. Those people in the copper business did not understand their business. Those who were selling copper from the good profitable mines, the good producers, thought that they were getting good profits while, at the same time, there was \$2 being lost from the unprofitable mines. Now, taking it as an industry, as a whole, copper for the past forty years has not returned a new dollar for an old dollar spent. That is the history of copper right up to today. They have not got a new dollar back for an old one. They have been giving their principal to their stockholders in the form of dividends, a small fraction above those returned by the transportation lines or any manufacturing or any of the perpetual investments that do not eat into their principal, and it was after calling Mr. Rogers' and Mr. Rockefeller's attention to that big broad principle that this industry was in a class by itself, that I asked them to put their capital in without any stock jobbing or trickery or trust monopoly at all. Simply buy the properties, show them to the world, how good an investment they were, and that we intended to keep the price year in and year out, which would be better for the consumer because our copper

would be sold at a price which would enable us to give steady wages to those employed in copper mining and give us a fair going rate of interest on the actual money invested in the copper industry, in our section of it, because we were only taking the profitable ones, and all the capital which had been sunk in the losing mines was outside of ours. We did not have to average that, so that it would fairly give a return of two hundred to four hundred per cent. and it holds good today, in my opinion. So that I agree with his facts, but his conclusions I think are erroneous, from not having gone deep enough into the subject. Prior to the time I interested Mr. Rogers in this project I had dealt in copper stocks from 1870 to 1896, say twenty-five years, buying and selling them, first for the house that I was brought up with, a Boston Banking & Brokerage House, that dealt in coppers and financed the different mines, and then on my own account. The articles of incorporation of the Amalgamated are very comprehensive in their character and contemplate the owning and operation of mining properties as well as the acquisition and holding of stocks. We had no purpose in acquiring simply the stocks originally, instead of the properties themselves, other than it would be necessary to first acquire the stocks, but I think eventually we contemplated putting all the properties into one corporation. The idea that I have told you about is correctly expressed in the deposition taken in what is known as the Parrot case in which I said: "We intended in a general way

to control the different corporations of which we had purchased the stock, and eventually to merge them into the new corporation, sell their properties and liquidate the corporations and disband them."

(Witness excused).

[Testimony of Arthur V. Corry, for Complainants.]

ARTHUR V. CORRY, a witness called on behalf of the complainants, testified in substance as follows:

DIRECT EXAMINATION.

My name is ARTHUR V. CORRY, and I live in Butte, Montana. My business is that of a mining engineer. I am a member of the firm of Harper, Macdonald & Company, Mining Engineers and Surveyors, Butte, Montana. I have lived in Butte since 1881, and have been practicing my profession since 1898, at which time I received the degree of mining engineer from the Colorado State School of Mines, upon the completion of a four years' course at that institution. I have been associated with Harper & Macdonald since April, 1912. Prior to that time for a period of five or six years, I maintained a general office in Butte, during the course of which time I made numerous examinations of mining properties in different parts of the State. I was individually engaged in developing properties of my own, and also engaged in developing properties under lease from others. I have noticed particularly the course and progress of the mining development in Butte

camps since about 1902 or 3. I have continuously kept in touch with conditions as best I could when in Butte. In a general way I am familiar with the mining development of the camp and the mining claims in it. I have bought and sold several claims on my own behalf and have, during these years, made numerous examinations for different clients with the idea of arriving at or appraising the value of the property for purchase or for sale, and have, during these years, obtained bonds upon mining property for clients whom I had interested or whom I sought to interest in various properties.

I know the properties of the Alice Gold Mining Company, or those that formerly belonged to it in Butte. I have had occasion to investigate the mining properties in that neighborhood with a view to their acquisition. In that neighborhood I have examined several claims somewhat removed from the Rainbow ledge, in which it was a factor as to whether or not they were in close proximity to the Rainbow ledge or possibly upon the Rainbow ledge beginning in March, 1906, down to February, 1912. I have here a map, which I will refer to, it being marked "Plaintiffs' Exhibit 1, Corry." I have often seen a copy of this map marked "Plaintiffs' Exhibit 1," and heretofore introduced in evidence, and the two maps are practically substantially the same. Complainants' Exhibit 1 is a reproduction of map made by Harper, Macdonald & Company and which map was made from the same original detailed sheets, that the exhibit

marked "Plaintiffs' Exhibit 1, Corry" is made, from the same original, the difference being possibly some greater detail, one being to a larger scale than the other. "Plaintiffs' Exhibit 1, Corry" is on the scale 400 feet to one inch. Upon it are shown several claims known as the Alice Group and colored an orange color. The area of these claims so shown and colored there is 149 acres plus; that is, it is between 149 and 150 acres. The data justifying this coloring was obtained from the Assessor's office in Silver Bow County, and was given there as the property taxed to the Alice Gold & Silver Mining Company. There is embraced in the area the Saukie East and Saukie West.

I have likewise a second map here—Plaintiffs' Exhibit 2, Corry—which is a geological and vein map of the Butte-Montana district taken from the professional papers, No. 74. It is published by the United States Geological Survey, under date of 1912, and it shows this is one of the series of several sheets appearing in that professional paper, and it shows in a general way the vein system in the entire Butte camp. Now upon this exhibit I have placed to the true scale in black lines, outlined in red, the group of claims shown on plaintiffs' exhibit 1, known as the Alice Group. These are placed upon plaintiffs' exhibit 2, Corry, in their true position. I desire to state that in addition to the Alice claims, I have shown the Poser Claim, and likewise the Elm Orlu. Upon plaintiffs' exhibit 2, the veins are shown according to

the legend on the right hand side of said map. The outcrops of the numerous veins are shown, silver veins being shown in blue, the copper veins in red, where known, and where either one or the other is not wholly developed they are shown in their respective colors as being broken dotted lines. I have surrounded the Alice group with a red border of Crayon, and have followed down the line of the blue colored vein known as the Jessie likewise; the Edith May with light crayon color—red. Within the interior of the space which marks the Alice Group, I have outlined in their respective colors, the veins shown thereon, in blue crayon; that is, I have brought out more prominently than they were upon the map the veins within the Alice group. I have been on the Alice property, but I have never been under ground. The Alice group occupies practically one mile of the outcrop of the Rainbow Ledge. Upon this group the Rainbow ledge is most strongly developed in its outcrop than anywhere else observable along its strike. Beginning upon the western limitation of it upon the Rising Star, this vein appears, or the Rainbow rather, appears as a series of two or three very wide veins with a strong outcrop and with generous mineralization. Proceeding easterly to the west edge of the Alice lode, we have three veins of the Alice lode. These likewise are very strongly mineralized in their outcrop. They vary in width from ten to thirty feet and as they proceed easterly approximately close to the center of the claim they seem to join or coalesce; pro-

ceeding easterly therefrom they appear for a short distance as a single individual vein of about 70 feet in width. In addition to this I may say this, that it is very likely that there are some parallel veins following this very wide vein, but their outcrop are approximately in this portion of the Alice on account of the great amount of dump, debris, covering it; I have every reason to believe that such is the case from the fact that there is a strong vein in the Saukie West, which, if changed in its western course, would traverse the northern portion of the Fraction lode, and into either the Alice or the Rooney. Continuing easterly we have upon the Magna Charta an extraordinary development of the vein outcrops, consisting of a series of three easily observable veins varying in width from—I wish to correct that, four veins, varying in width from 20 to 40 or 50 feet; these have a general northeasterly strike; immediately south of the Magna Charta and in the Magnolia ground, there is a strong well developed vein belonging to the Rainbow series, having a general east and west strike of 10 to 12 feet in width, at least; continuing easterly—then referring immediately to the Saukie West upon the north and the Saukie East, there is shown thereon a vein having a general northeast strike of 15 to 20 feet in width; this vein can be traced easterly through the Saukie East to the point approximately corresponding to the east end line of the Saukie East, where apparently it is broken up into two or more diverging veins which proceed through the Boston lode.

Coming now to the Valdemere lode, immediately east of the Magna Charta, this same Rainbow lode is very strongly developed therein, and there is a series of open stopes of varying widths upon the three of the four veins constituting the Alice Lode at this point, and beyond this the vein continues into the Poser ground, and in a general easterly direction, easterly through the Elm Orlu into the Black Rock. I may say that upon the Reef Fraction there is a very strong east and west manganese, quartz manganese vein, lode, of a width of three to five feet, as shown in a small open shaft there, this very likely being one of the minor parallel veins to the Magna Charta Rainbow ledge. Now, I have described in a general way the Rainbow ledge itself; there is a system, or there are a series at very frequent intervals of veins of a diverging strike coming into the Rainbow ledge. I refer particularly to veins with a northwesterly strike, southeasterly strike, and that is very noticeable. The Rainbow lode, as exhibited by actual workings, is traceable for at least two miles and a half beyond the limitations shown upon this map. Beginning at a point a little east, at a point about where the word "Black Rock" appears, and extending generally westerly in the shape of an arc or rainbow, a distance of about two miles and a half. At frequent intervals along its strike there are numerous old shafts; also its outcrop may be observable at frequent intervals by the fact that it frequently projects above the surface of the ground, or that it throws a very strong out-

crop material,—float material—broken down from the original outcrop. As to its relative importance on the veins of the Butte camp, at least as indicated by its size, it is the most pronounced feature in the entire Butte district, even exceeding the ancient outcrop in the southern part of the City. It is by far the largest and most continuous outcrop, I believe, in the entire district. As to actual operations carried on at any place along the lode—well, upon the Poser and upon the Elm Orlu and the Black Rock, actual mining operations of considerable magnitude are being carried on upon this Rainbow lode, the work upon the Poser and Elm Orlu being done by the Clark interests and upon the Black Rock and Four Johns by the Butte and Superior Copper Company. From the Black Rock and Elm Orlu they are taking zinc ore, and possibly some from the Poser underground; from both the Elm Orlu and Poser they have in times past shipped and extracted some considerable copper ore. I cannot give the amount except by reference to their reports. It was a very large tonnage; an extraordinary large production of zinc. Throughout the whole extent of the Alice property, and more especially upon the Rainbow ledge itself, there has been a great amount of development. Upon the Valdemere claim there is a shaft that has from its dump there, evidence of being about 400 feet deep, and upon the Magna Charta, to the best of my inquiry and from the general appearance there, there is likewise a deep shaft, presumably 700 feet deep.

Upon the Clark's Fraction there is now being operated a shaft of some considerable depth through lessors; that likewise is upon this Rainbow ledge, but as to what particular individual vein of the Rainbow ledge, I cannot say; and upon the Alice there are a great many surface workings and shafts of varying depths, in addition to which there is a large shaft, or a deep shaft with very large dumps; presumably the shaft is, to the best of my inquiry, 1500 feet deep. Upon the Moulten there is being operated now through lessors,—the Moulten itself being upon the Rainbow ledge, and lying between two portions of the Alice,—the Rising Star and the Alice claims; a deep shaft there is being operated, and to the west of that there appears upon the Rising Star a shaft presumably four or five hundred feet deep; in addition to this there are numerous shafts of varying depths upon some of the claims lying south of the Alice lode, and not distinctly upon the Rainbow lode itself. In the Curry, in the Midnight and the Blue Wing and within the Paymaster and Neptune there are shafts that are open,—in some instances the parallel vein and in other instances a northwest vein; upon the Magnolia claim there is a series of open cuts and the remains of a shaft which was evidently of some considerable depth; immediately south of the Magnolia the Belle of Butte claim is, or has until lately, been operated by lessees, or operated by some miners through a shaft near the western end thereof. That is on a ledge coming into the Rainbow ledge. Speaking

from my own knowledge that is available to everybody these old claims were worked for their silver contents by the former operators, the Alice Company, and by lessees subsequent to that time. In other words, the activity upon the Alice lode has been wholly confined to the mining of silver ores. They may carry a greater or less extent of gold—primarily for the silver contents. As regards the northwest-southeast veins entering this ground, there is shown upon this map on the Moose lode, the Moose shaft, that is approximate, and is not intended to be within 25 or 30 feet of its exact position, said position being taken with a compass, it being difficult of measurement at that point. There is likewise shown on the Badger State claim the Badger State shaft and the Badger State discovery shaft; these are within five or ten feet of their true position. The Badger State shaft is southeasterly from the Moose shaft a distance of approximately 1250 feet; the Badger discovery shaft is easterly from the Badger State shaft a distance of approximately 500 feet. The Badger State shaft and the Moose shaft are both deep shafts, and through these considerable mining activity, mining operations are being conducted; it is perfectly feasible to connect the Moose shaft by underground workings with the Badger State shaft; that is, they are not at such a great distance that that would not be done in that course of mining operations. Beginning near the center of the Valdemere claim and the underground—beginning at the center of the south side line of the

Valdemere claim, there is a strong vein, northwest vein, which proceeds southeasterly to a point just below the claim known as Survey 7741; continuing generally southeasterly, this claim 7741,—a better definition would be in close proximity to the southwest corner of the Mill View,—continuing in a southeasterly direction to about the center of the Badger State claim and the west side line,—very close to this point it forms a juncture with a vein which has a more northwesterly course, proceeding generally northwesterly presumably through the Moose shaft; from this point, from the center of the west side line of the Badger State, proceeding in a generally southeasterly direction through the Badger State shaft itself, and apparently continuing in its general southeasterly direction; immediately north of this vein, a distance of about 125 feet south of the north side line of the Badger State, there is a vein of considerable width having a general strike of north 85 west; this may be possibly a faulted section of a vein on the northerly side line of the Badger State, and I cannot designate it by any specific name; it is, however, a very strong ledge. In a general way there occur in this vicinity two veins at least—two northwest fractured veins, fault veins, which have proven productive. These are known as the Jesse and the Edith May, the latter being approximately parallel to the former, and a distance varying from six to seven hundred feet south thereof. The vein colored red is the Jesse vein, the second one is marked Edith May.

Both veins are colored red and I have written the respective names of each alongside the line. There has been a very considerable production from the Jesse vein through workings in the Tuolumne and the North Butte. The famous mines along that vein are the North Butte, the Butte and Ballaklava upon the eastern extremity. The most noted individual claim is along there, being the Mountain Chief and the Right Bower, the Tuolumne, and the Jesse and the Badger State, the Mill View,—along the Jesse; along the Edith May the properties of the North Butte Company, that is, the Jesse, the Edith May and the Miners Union, and the Aurora. They are producers of very considerable tonnage of very high grade ore. These two veins are worked for the copper ores within them; the physical appearance of the ore,—it occurs in very large shoots of high grade ore, and these shoots are of considerable magnitude and form a very easily developed ore body, and are no doubt highly profitable. Operations are carried on on the Jesse vein along its strike over at least 3000 feet. The furthest development upon the Jesse to the west are the workings possibly in the Granite Mountain. I pass this vein through the Badger State vein for the reason that there appears a series of very strong northwest outcrops which would co-ordinate with the Jesse vein outcrop to the southeast and having the same general surface appearance. It is either the Jesse or a parallel vein that passes as indicated. The shaft on the Badger State is so placed as to lead to the conclusion that

they are working the Jesse vein. The vein worked through the new shaft upon the Moose, I believe, would be a very strong northwest vein coming through the Badger State, and very likely being a faulted segment of the Edith May. The most westerly outcrop that I find in either of those two veins is at a point about 200 feet easterly from the Moose shaft. As a mining engineer, I would say as to these veins continuing until the encountering of the Rainbow lode itself, that between this point last referred to and the southern limits of the Alice property, there are a series of holes which bring this line of outcrop to within possibly 100 feet of the southern boundaries of the Alice group, and I would say that they would at least continue to the intersection with the Alice lode, and if possible would continue a distance into the Rainbow lode. Usually in both of these properties any large commercial ore bodies of any great consequences are found below the 1000 foot levels. There are some instances of small ore shoots, or lenses, appearing a couple of hundred feet higher up toward the surface than that, but the large well determined ore bodies do not occur above the 1000 foot level. To reasonable depths you find very fair continuity along the strike and along the dip of these individual ore bodies within the vein itself with some few exceptions, the mineralization is quite uniform within the body itself. It is my opinion that those two veins eventually unite or intersect with the Rainbow lode. The general expectancy, where two great veins thus

unite or coalesce, is that at that point of juncture, or in very close proximity thereto, that you will encounter large ore shoots and larger ore bodies than elsewhere along either one of the two veins taking part in this juncture or intersection. The basis of that expectation is the physical fact of the disturbance of one or the other—the breaking up of one vein by the second vein, penetrating it, affording an open space through which mineralizing solutions can more freely circulate and within these spaces the opportunity is afforded of depositing the mineral bearing contents that up to that time were in solution, traversing this particular vein, or that particular area. From what I know of the conditions in the intersecting or coalescing of the copper bearing veins, I would say with reference to the likelihood of copper being found in the exploration of the Alice properties, that I believe that at those favorable points copper bodies would be found. In addition to these two particular northwest veins there are numerous others that were observable especially from the southwest portion of the ground, but I was not afforded the opportunity of studying those in great detail, but over this entire portion of the Alice group it is a very frequent occurrence, the observance of the northwest veins coming into the main Alice, and immediately north of the Alice, of seeing some veins more easterly or westerly, however, that likewise will come into the Rainbow ledge. As to how extensively the Butte camp was prospected and worked for silver,—it

was prospected over a greater portion of the entire district and for several miles around, for silver, but the actual silver production,—producing properties, were confined more to this northern portion of the camp, and especially to the Alice on the Rainbow ledge, and in that vicinity and to the westerly of the ground shown upon this exhibit,—plaintiffs' exhibit 1, Corry. There is history of change in some of the mines in Butte from silver to copper; that is the ordinary experience, that is, to a greater or less depth the majority of the veins are more valuable for their silver contents. They show more silver values than they do copper, or even gold, and with depth some of these individual properties have developed into distinctly and wholly copper producers. There has been an extension of the copper producing area of Butte. The entire history of mining operations in Butte has been an extension of the boundaries of the producing mines of any one period. The tendency has constantly been to enlarge the boundaries beyond which it was supposed there was no property capable of producing and that development in the last few years has taken a pronounced trend towards the northern portion of the camp, in particular to the region in the vicinity of the Alice group. These two copper veins that I have mentioned, the Jesse and the Edith May, as far as production is concerned are relatively a result of the late period of development. I believe the North Butte Company was the first to produce continuously a large amount of ore

from either of these veins. and I think that was within the last five or six years. Other mines now producing largely still further to the north and west of the North Butte properties are the Berlin, as nearly as I can inform myself, the Croesus and the Snow Ball; immediately north of the Badger State, the Emily has been operating along the Badger State, and north of the Emily and adjoining that the Pilot has been mining. There is litigation between the Pilot and the Anaconda Copper Mining Company about certain apex rights upon the Emily ledge. The Pilot Butte is operating underneath the Emily from its shaft on the Pilot Butte. I was familiar with all of these conditions in the early part of 1910. One thing existing at that time which caused attention to be directed to that portion of the camp was the general expansion of the mining activities; another was the expectancy of being able within a very short interval to treat ores which up to that time were not supposed could be treated or had not been treated economically, and during that time there was considerable general development over the entire district, especially the northwestern part. Several properties were operating successfully in the vicinity of this property along about that time. The operations of the Butte and Superior on the Black Rock at that time had reached a stage where there was no question as to ultimately achieving a financial success; in other words, their metallurgical difficulties had practically been overcome as they were in such shape that they could

reasonably look forward to an uninterrupted successful treatment of the particular class of ore mined and discovered and outlined in the Black Rock claim. They commenced to produce profitably, I believe, in 1910. As to the exact date of the profit of the Butte and Superior Copper Company, taking over the Black Rock, I cannot say, but I will say that very likely it was in 1906, when Captain Wolvin took the Black Rock. Previous to that time it had been operated as a silver property throughout a period of a great many years. I have attempted to make a valuation of the Alice properties as they existed in the month of May, 1910, and I believe that a fair market value of the Alice group at that time would be about three and one-quarter millions of dollars. As to the possibility of selling in 1910, if I owned this property, I would say that I would not sell, except that I absolutely had it taken away from me; that is, I would prefer not to sell, and my judgment would dictate that I would not sell at that time because in the light of improvement in metallurgical processes and the fact that I have here approximately one mile of the outcrop of one of the strongest veins in the camp, and further that the general development, after quite a period of acquiescence was enlarging, and so developing in a general way, improving and developing the property.

Cross Examination.

The acreage of the Alice claims, shown in color, there is 145 acres. My sole source of information was the tax lists, which I examined, and which

were sent to the Alice Company; and if there were joint ownerships in the Paymaster, Saukie East and Saukie West, you would have to cut the Alice acreage down a corresponding amount. I took my geological map from government professional paper No. 74, 1912, and put in the Alice claim lines in red to a rough scale, as near as I could, on that small claim, and excentuated the Rainbow lode going through there as colored upon the original map, and likewise the Jesse and Edith May, I have excentuated, placing green coloring thereon. On the government publication there is a legend on the eastern portion, indicating by the coloring and lettering what character of veins the government department had given each of these; on that the blue color, the legend shows that the veins which are indicated in blue were to be shown or understood as being silver veins; those in red copper veins; and I took the government publication which showed the Edith May and Jesse veins in blue, indicating them as silver, and changed the coloring to red. I am willing now to mean that they are copper veins in distinction to being silver veins. I did not make a substantial change in the government map, which I did not tell Mr. Walsh about; in doing what I did I merely meant to excentuate those veins. It did not occur to me I would be bound to the particular coloring here, which I now notice, and which I knew before in a general way, that the blue was silver and the red copper, but it was so notorious that the Jesse and Edith May

are copper veins, that while I used a red it was merely because I had the red in the coloring, and I am willing to have it construed as my changing to a copper appearance. It was merely fortuitous at first, as was the boundary of my group. The length of the Rising Star claim is 1090 feet; the Alice 1190 and the Magna Charta, 1500 feet; the width of the Valdemere is 297 feet on the north and 300 feet on the south, those are the four claims of the Alice group through which I carried the Rainbow lode, its total length within the Alice group being approximately three-quarters of a mile. I said a mile on direct simply from the fact that the Boston lode here extends over a distance, possibly, compensating for the Moulten, and within the Boston lode we have a very strong ledge of considerable magnitude, and in addition to which within the Curry and others there are some veins compensating for any little differences along the outcrop of the main Rainbow. The exact length of the Alice ground, through which I carry the main Rainbow lode, is 4080 feet. I trace the Rainbow lode about two miles and a half through the country, beginning at the east on the Four Johns, and that is one section,—one mile; this is the second section through which it goes,—second mile; and it continues westerly of the Belcher. I carry the Rainbow down through the Rising Star at the same time taking some notice of the series of the east and west veins, as I stated, coming from the Goldsmith and Silversmith. All that I know about the Alice is what I got from the

surface examination and surface study. I have not been underground in the Alice to any depth; I have been down 30 or 40 feet. Since 1906, I have given considerable attention to this northern portion of the District. I examined a great many claims in detail for the purpose of taking leases thereon, and in March, 1906, I became interested in the property possibly 1800 feet north of this. From 1906, for a period of four years my attention and energy were more or less occupied with claims in this vicinity. I examined a great many of them and up to about 1912. During that period of six years at very frequent intervals, I traversed this property, and in this particular instance I have given four or five days detailed study to the Alice group on the surface. The operations carried on by me in 1906 in this vicinity were on the Eagle. The sum total of the entire operations on the Eagle were not profitable. I netted \$35,000.00 in the five months' lease and continued until my net results were unprofitable on account of the fact that we were not able to market our ore, except at a rate eight times the rate we had received on the ore at previous times during our operations. I stated that the Rainbow lode was one of the largest and most prominent veins in Butte, as shown on the surface. Of course, you look to your vein developments rather than the size of the ledge to determine the value. I know the Black Chief vein in the southern part of Butte. With the exception of the Rainbow, it is the most prominent vein showing in Butte. From the surface

ores and shallow workings it has had a considerable silver production. I placed the Black Rock in the Rainbow lode, the government map does not show it. The Rainbow takes a turn to the north there. When I speak of the Rainbow I mean there are several lodes there that make it up, they vary in course and strike. There is simply a series of veins going through there that I call the Rainbow. I know of my own knowledge that there were workings on the Alice group, simply from the fact that I went through the mill while they were operating, possibly two or three hundred times, and knew that they were treating ore derived from the Alice. On my map,—plaintiffs' exhibit 2, Corry, I follow roughly the Rainbow lode as shown on the government map. The government map shows the big vein system going through the Magna Charta and Valdemere to the southeast and disconnects the blue veins shown on the Black Rock. There is a lapse there, except that we do know from continuous operation that the Black Rock and Elm Orlu and physical fact that they do follow down continuously from one to the other, that constitutes that the Black Rock ledge. I have changed this vein system with my blue coloring as shown on the original government map by drawing this solid blue coloring where the government map shows a break. There is that change more clearly representing the conditions observable there as the result of recent developments. I know there is a very strong developed breaking there, which shows a continuous

development from the Elm Orlu and the Black Rock, and I can trace the Rainbow down to the Elm Orlu, and I accordingly continue that as in my judgment truly represented the actual conditions of the outcrop. I mean there are continuous stope workings following the vein which I took to consider naturally must have followed the vein or else would not have been placed there. The map marked "Defendants' exhibit 1" is another copy of the same map, which I have used as my exhibit No. 2, Corry. I know nothing about the Poser production except that I have observed since 1906 at various intervals,—the fact that they were hauling ore from the ore bins along the road, which I frequently traversed, ore coming from the Poser claim and a shaft thereon. I know that in the Elm Orlu I have seen copper ore a distance of two or three hundred feet east of the shaft. I do not know of any production from the Elm Orlu or from the Poser, excepting a little copper on the 500 of the Poser. I know there have been extensive developments in both claims. Operations have been carried on on the Black Rock lode, I should say for fifteen years at least. Operations prior to the recent zinc operations were confined to lessees taking out more or less silver ore and in doing that they developed the claim quite extensively both on the Black Rock and Niagara. The Butte and Superior were shipping to Basin, I believe, in July or August, 1910. From reading their reports, it seems to me that in 1910 their net profit on ore was sixty some odd thousand dollars; their oper-

ations, however, resulted in a very great deficit. I know as a matter of general knowledge that about the time Mr. Bruce came there as manager, the Butte and Superior operations were neither profitable nor satisfactory.

I know that the Alice property were worked very extensively in early days, I should judge until about 92 or 93. At that time they worked on some of the shallow depths, presumably on the 700 or above. Judging from a reference to their underground mining maps, they did a great deal of work on the various levels below the 1000. The entire surface has been gone over, back and forth, and has been quite thoroughly prospected. In placing my value on the property, I did not consider whether or not there still was great deposit of a silicious silver ore, a low grade which was too low grade at that time, but which could very likely be treated by a percolating or cyaniding process. I did not consider that that was a feature of it, although, of course, it occurs to me but I base my valuation of that property as it appealed to me upon its location,—I considered that the Alice was not thoroughly depleted to the 1500 foot level on the veins there. I considered that the fact of obtaining anything above the 1500 foot level, from which I believe there exists some possibilities, would simply add to its worth. I did not give any value at all to ore bodies that are known above the 1500 foot level. Necessarily I had to disregard the developments down to the 1500 foot level from the fact that I could not possess myself of

the conditions there in the upper 1500 foot. Of course, I considered in my own mind that there were still possibilities above and within their old workings no matter how extensive they would be. I considered that there was possibly old gob that could be operated, that there would be more or less of an assay. I considered that the underground workings there, as shown upon the map, were worth at least,—say, in the Alice, by judging from the plan map, possibly half a million dollars. I would not give that value to the material in the gob, and what might be left to the old workings, what I mean is that it would cost that much to actually replace those workings that are there now. They have an actual intrinsic value of at least half a million dollars, the development and running of those would have an actual value of that amount,—the drifts, levels and crosscuts. I would not say that all operations were going to be below the 1500. It is my belief that there are great possibilities as to the treatment of what may have been too low grade silver ores for them to treat at that time. I do not know today of any ores above the 1500 foot level in the Alice properties that I could say I could treat profitably at this time by any process. I know at different times of efforts and operations being conducted upon the Alice to treat these Alice ores profitably. I remember the mill of the Montana Zinc Company, that Wesiner had there; it was quite an extensive large sized experimental plant. I know the Lexington group to the south. I would not say as to

the similarity of the base ores of the two, from the fact that I have not gone into the Lexington. I have found some veins that have a general southeasterly course, that would presumably go into the Lexington group. I know the zinc plant on the Lexington that was operated for some years by Heinze. In reaching my ideas as to the values of the Alice group, I did not assume that the ores found there are similar to the Black Rock ores, my reaching of the valuation upon the Alice ores was not greatly influenced by the results of the operations on the Butte-Superior, because at that time I considered that if they were successful that that would be a factor of safety upon my appraisal of the value of the Alice property; just as I stated in my examination that personally I would not sell the Alice group at that time for three million and a quarter except that I were absolutely compelled to do so. I believe there are a great many men who could have gone out into the market and sold the Alice property to anybody for three and one-quarter million dollars. It occurs to me that there are a great many men who could readily place that property for a sum in excess of that amount. I place my value irrespective of the possibility of finding ore such as the Black Rock; that was a small factor, of course, because it was in evidence that the general mining operations were expanding, and that this was coming into the market. It was coming into the field of active operations and only in so much as that was the Black Rock considered. Yes, as I stated, it

was considered and was one of the factors that would persuade me not to sell at that time. Generally speaking, I would not put a value of millions on this property, because the Black Rock people to the east had been somewhat successful in their operations, but in this particular case one of the strongest vein zones of the district is there, and very generously mineralized on the outcrop, and to my mind very more pronounced on the development and exploration,—that really was the guiding principle of my appraisal of that property. I would say that they find the zinc ores that are being worked so successfully in the Black Rock below the 1200,—I think possibly the 1200 stopes they have worked there, but whether or not those are ores that are wholly like it or not I cannot say. As a general thing, within reasonable limitations, I would say the ore improves in depth in the Black Rock, for instance I notice an improvement between the 900 elevation and the 1200 in ground in very close proximity to the Black Rock, on the Pilot Butte. That is an entirely different system of veins; that vein is a northeast strike but from memory I cannot give you the absolute strike of it, it is strongly northeast. I would not change the other veins in my district from that one observation. If I had considered the possibilities of the Alice strictly from its zinc possibilities, I would be inclined to greatly increase my estimate as to its value. I did not consider the zinc possibilities in arriving at my value except in a general way, whether the mineralization was low grade sili-

cious ore, or whether the copper came in with increased depth, or commercial bodies were found at intersections of cross veins,—why, those were considered generally as being taken in my general appraisal of the property. I did not intend to change the position of the veins on the government map any more than I have already indicated, except by showing continuity as I believed it in the Rainbow lode, and as shown on the surface. If in drawing that line I veered over or changed any other, it was secondary only to showing, as I believed, an uninterrupted continuous vein system. My exhibit, plaintiffs' exhibit 2, Corry, was used as a basis and is adapted to show to the best of my observation and judgment, the conditions existing upon the surface of that immediate area; and I have drawn it in the different way than shown on the government map. I imagine the greater portion of this surface development, that I found there, was there when the data for this government map was prepared. I notice on the government map where the letter "a" is marked, that there is shown a vein cutting right through and breaking off without any connection with the vein to the north, there at the railroad. On my map I have continued that into the Elm Orlu; that is another distinct change from the government map. There is no new development on the surface that justifies me in making that change other than the following down along the strike of that vein, it is quite certain to me that there is no great lapse in the continuity of that

vein. I differ with the government map in minor details as to the position of that vein. Besides jumping it from where the letter "a" is marked, or to the Elm Orlu, I make another connection through to the Black Rock. I go from one vein to another through there as indicated upon exhibit 1, Corry, by drawing a vein diagonally through where the government does not show any, I connect from where the "a" is marked all the way to the Black Rock. There is no new surface development that justifies that, except that that is my best judgment and from all data that I am able to possess myself of, that truly represents the conditions and the position of that vein outcrop at that particular place. The data that I possessed myself of in addition to the government map is that I have seen some underground maps of both the Elm Orlu and the Black Rock, which afforded me some data upon which to base this. I have seen maps of the Elm Orlu and Black Rock that I would consider were of such reasonably close elevation that it demonstrated that they were one and the same ore body,—same vein. I do not recall now the depths beneath the surface, but it was down to 1200 anyway. Those maps of the underground workings would help me fix the vein on the surface, that I have drawn through there, because of the fact that it is reasonable to infer that a vein shown in the continuous ore bodies beneath the ground, while it might have a few lapses along its outcrop, in the surface would be fairly continuous. I cannot recall whether the workings

I saw in the ground showed a north or southerly dip. If I were going to fix the apex of what I saw underground, I would necessarily want to know the dip. To make my connection through to the Black Rock, the only level I spoke of having been in in the Black Rock was the 1200, I would not say that that information was the full data I had, which would enable me to draw that line to the Black Rock easterly. I considered it from all possible information I had, and I believe it fairly represented the condition of affairs on the surface. I believe that that apex goes through the Black Rock. I would not say at the present time, without further study, that outside of that particular point that you instanced, that there was anything further than my general belief, based upon the best possible information that I could possess myself of. I had the surface to look at. I saw the 1200 level of the Black Rock and saw some deep maps, but did not notice the dip of the vein, and in addition to that my knowledge that a strong vein, such as this, seldom if ever breaks off in a very short distance. If the government people saw fit to extend them in a different direction, they placed a different construction on it than I did. In placing my valuation of three and a quarter million dollars on the Alice group, I said distinctly that I had in mind the asset of that portion above any workings, becoming an asset at this day and age from an increase in the method and the facilities in the treatment, decreasing the cost and necessarily they were assets. So far as the ore

bodies exposed in the Alice to the 1500, there is a possibility that some time there is something there that may some time prove of value. I gave you half a million dollars this morning, as the value of the workings; that is outside of my valuation of three and a quarter millions. I place the value at half a million dollars instead of three-fourths or one hundred thousand dollars from the fact that I have not been underground. My only source of information has been what I supposed was the official report of the Company, and in that they present a map which shows a great many hundreds of feet of workings of different levels.

Q. What possibilities are there in the Rainbow lode then, in your mind, for or in that lode itself, or the leads that make up the Rainbow lode. You don't know of anything above the 1500, below that what do you have,—do you have zinc, copper or what?

A. Well, I would somewhere from the surface to the bottom,—I am led to believe there are bodies of zinc ore there from the fact that the dumps are considerable quantities, which would not ordinarily be hauled there.

What I have told you about those ores is simply a possibility that sometime they would be worth something. I do not know about the conditions of the ores on the 1500, or their grade of zinc.

Q. You do not know so far as any other developments in the Alice disclose ore bodies, or other character of zinc or silver; you do not know about

what the developments now in the Alice expose,—any possibility of that, do you; in other words, that the ground is sufficient at these points where you make projected veins, to show that they do not exist there, at least above the 1500?

A. Well, that I could not say.

I do not know of any place in the Rainbow ledge or lode, outside of in the Elm Orlu where copper ores of a commercial character have been found. What copper they found in the Elm Orlu was in the cross vein, a southeasterly and northwesterly vein; a vein entirely independent and of a different age and system than the Rainbow system of leads, but in close proximity to the Rainbow lode, as I stated. I would expect at some elevation within that northwest ledge, in its traversing or passing through the Rainbow, or its juncture with the Rainbow—I certainly would expect a deposit of copper ore at some depth. By a juncture I mean a coming together,—a coalescing of two veins which up to that point had separate existence; or an apparent juncture where the material would be so crushed that the identity of one or the other could not be absolutely determined. One vein cutting off another through it is not a juncture, that is one traversing. The Rainbow lode series are an old east and west series. You also have a copper series to the south,—the Anaconda,—the old east and west series of veins. They are entirely distinct in their characteristics, age, and everything from the northwest-southeast veins. Wherever you find these northwest-southeast

veins like the Jesse, and Edith Hay, and the others I spoke of, they have invariably faulted, and go through east and west veins. So in the Elm Orlu or anywhere else, you are not going to have a juncture with the Rainbow veins, but there could be a juncture of similar easterly and westerly veins that possibly would be mineralized from northwest veins along their course; possibly mineralized from the channel of solutions traversing, say a northwest vein. I do not know distinctly of any east and west vein in this vicinity carrying copper minerals, except that it would be accidental; I cannot conceive of how such a thing could happen. The Elm Orlu copper vein, which I say I saw close to the Rainbow series or lode is a southeast and northwest vein. When that vein was forming, the Rainbow ledge had already been mineralized and the other one comes along and cuts it, and you have no juncture there.

Q. Or not mineralization particularly?

A. You could have, in this locality of this eruption of the Rainbow. As a geologist or mineralogist, I do not know that I have ever seen that in Butte, or ever heard any mineralogist claim such mineralization as that in the east and west vein.

I do not despair of finding copper ore in the Rainbow lode itself. The Rainbow lode has been developed from the Rising Star on the west on through the Alice ground to the Elm Orlu, and I carry it to the Black Rock, and the Alice is 1500 feet and the Moulten 1500, and I know of no place where copper ore has been found in the vein it-

self. Somebody has to finally find something in that vein, and I do not consider that sufficiently deep development has been done in that vicinity to tell the last story. This then is classed not as copper bearing but as a silver vein. It has a different geological formation than the copper veins of Butte. As to the northwest and southeast veins, in the Alice ground that may carry copper ore,—I believe the Jesse and possibly the Edith May are the only two. That country has been pretty well developed underground. You have a crosscut from the Pilot, from the south, going up connecting with those workings. You have that country pretty well developed in that immediate locality down to the 2200 level, that is the locality nearest the Alice ground. There is a series of northwest veins over in the southwest portion of the Alice group, upon which considerable work has been done, judging from the plan maps, namely, the Currie, and Blue Wing, and upon the surface thereof can be seen veins striking northwest, that to my mind are worthy of further development. I do not know of any place either in the Alice ground, or outside of it, that copper ore has been found in any of the veins I have last referred to in the Currie or the Blue Wing. There has been extensive development to the south of that in the Chief Joseph and Lexington. I do not know of any place there where there has been shown copper pointing in that direction.

Going back to the Jesse and the Edith May, I know of the Jesse vein east into the Adelaide. I

do not know it down through the Mountain Chief, the Right Bower or the Ballaklava. I know there was a controversy by the Ballaklava, its contention being that the vein in which it had the big ore bodies was in the Jesse vein. The position of the apex, that I put on my map, exhibit Corry, No. 2, is a close approximation, showing that vein as it goes out of the west end of the Adelaide. The end line of the Adelaide is about 600 feet long. The apex of that vein possibly goes right through the northwest corner of the Adelaide, which would be at least 200 feet from where I have placed it. I simply made it as a sketch showing the general course, naming the other as close an approximation as I could. I am more familiar with it underground. Of course, it is the position of the apex that we are interested in here. I know the Jesse vein as far westerly as the crosscuts in the Speculator. I have found it on the surface of the west end of the Badger State. I do not know it at any point underground of the west end line of the Gem, shown on my map. I imagine I would be easily within 200 feet of the position of the apex going into the Badger State because the next point that I have is a point on the west end line of the Badger State, where I find the vein projecting southeasterly, and there appears to be that word "Jesse vein." With the surface workings the wash and the railroad fillings and things, by a sufficient examination, you can correlate and carry a vein through that distance to the surface in almost any direc-

tion. It is fairly possibly to correlate precisely in one vein. As to whether or not it is the particular vein disclosed in this working hundreds of feet deeper it is difficult to say.

Q. Now, your Jesse, through the west side of the Badger State, how far did you jump that across the surface there,—how far from where you cross the west end line of the Jesse do you know it in any cut or working, or anything showing it?

A. I should say a distance of possibly 150 feet southeasterly where there apparently is a break in the vein; and a little further to the south I pick up a vein with the same general course, the same characteristics as the one I just followed down.

I pick it up in the outcrop along the ridge in a series of scattered holes. I want to go on record that substantially such an outcrop could be found on the Badger State claim by a series of holes as disclosed there, to-wit: beginning at the northwest corner of the Badger State, going down a distance of 125 feet there is encountered a vein six to eight feet wide, and which has a strike of north 85 west, going down a distance of about 165 feet southerly therefrom there is a vein show in the series of holes for a strike north sixty west, which continues northwesterly a short distance when there is a spur going off therefrom in a general easterly direction. I do not know who drew this black line on complainants' exhibit 1, but evidently it is indicated to represent the Jesse vein from where it is carried through, and it carries the Jesse vein through the southwest corner of the

Poser, and way up here. There is a point a short distance north of the northwest corner of the Mill View, a vein which strikes north, general northwest strike, north 70 or 75 west. That is of some importance in connection with the Alice ground whether that goes through the position, through the southwest corner of the Poser, or whether it goes where I place it, it certainly would make a big difference in the amount of the apex, the amount that would be found, of the strike, in the Alice ground. This red line of mine on my map shows there the Jesse vein, or some parallel vein going up through that country, that is my idea, I would not presume absolutely to determine its relation with anything below without having sufficient data to do so. It may be a split for instance from some vein there, having at the point of observation that particular strike. The fact as to whether or not some other vein is pointing towards the Alice ground, and is an ore producing vein or a parallel vein, or a spur that never produced, would certainly be a factor in determining its value, but my approximation was placed only incidentally upon the possibility of these northwest veins going up. On my exhibit 2 Corry, I carried that Jesse vein right on through the Rainbow series, and show it a considerable distance to the north, the scale of that map being approximately 400 feet to the inch; and carry it about 1250 feet northerly of the Rainbow lode series. I believe that these northwest veins do, or will be found, to go through the Rainbow ledge, with an individuality

beyond. I have never seen this vein doing that. I cannot say where there are any workings north that would justify the 1500 foot projection north of the Rainbow lode series. Going back to the Jesse vein underground,—all these northwest-southeast veins carry their ore in shoots,—are pocketed, as the miners call it. They do not have the regular ore bodies that the old east and west, the Anaconda system, has. The mineralization is more concentrated; and you find these barren places in the veins for long distances both on the dip and strike generally. When you get away from where you find your shoot, it is simply a question of possibility of finding another; there being nothing there to indicate whether the shoot is there or not. I know of ore in the Jesse vein, in the Tuolumne and in the North Butte; also in the High Ore and the Adelaide,—that is my only absolute knowledge of it. I do not know of any copper ore of my own knowledge that has been mined from the Jesse vein. I have never been in the Badger State workings. It is about 2200 feet from the west end line of the Gem to the Alice ground, along any possible course of the Jesse vein. It would be very discouraging for you to follow along that Jesse vein, its developments in depth, down to the 2000, 2200 feet westerly from the Gem line, and did not find any ore anywhere. In the Mountain Chief and the Right Bower they had ore as high as the 700 and the Alice ground has been pretty well developed to along 700 feet. I am not as sure of the position of the Edith May

vein being correctly shown on the map here in the red as I am of the Jesse, I know much less of that vein underground. I do not know of any place west of the Badger State shaft where there has been any ore found in the Edith May vein. I do not know the Edith May vein, underground east of that. I have been underground in the Edith May in the North Butte at the crosscut at all the levels more particularly the twelve and sixteen; I do not know of any ore either in the Jesse or the Edith May veins beneath the 2200. As to the general history of that vein, when the North Butte Company got down to the 2200 they found the vein impoverished, and they have not gotten through it as far as I know. As to the ore production of the North Butte last year and the year before, I stated that its big production was from the Jesse vein,—the North Butte commenced operation about 1905,—and within a few months after that time it was mining high grade ore in great quantities from those veins. That continued until they got down to the 2200 and since then the production of the North Butte Company has not been from either the Edith May or Jesse. Going westerly on the Edith May there are some outcrops having that general northwest strike. It goes in close proximity to the Moose shaft. As to what shows that, perhaps 150 feet southwest of the Moose shaft upon the Auroria ground, there is a strong northwest vein, about north 75 west, the vein is six to eight feet wide, will possibly project through a distance of about 150 feet,—would be 100 feet

south of the position on the ground of the Moose shaft, approximately 150 feet southeasterly of the Moose shaft; and if you project that Edith May vein, it would go possibly within 100 feet of the Moose shaft. I sketched a projection of the Edith May north to show the turn there of both the Jesse and Edith May, and as to whether or not the veins that I do pick up in close proximity to the Alice are absolutely those, as stated, or not, I could not say but the mere fact exists that at those points are veins having their general strike and of considerable prominence; and while I have shown the Edith May immediately north of the Moose, it is somewhere within 100 feet of that particular point,—it is an approximation. If it swings around to the south and westerly instead of being to the north of the Moose shaft, that would make some difference as to where it would hit the Alice ground. I have heard it uncontradictedly stated that the Badger State gets its ore from an old east and west vein called the Badger State vein. Directly speaking it is not an east and west vein, it is north 76 west, passing through the Badger discovery. I do not know its course as to whether it would go through the Alice ground at all. I have never studied that out on the surface. I believe I have given you all I can think of about the Alice and Edith May copper veins that would lead you to expect they were anywhere in the Alice ground with ore in them,—to find in the Alice ground copper ore bodies. I do not know of any spot in

the Jesse or Edith May veins where copper ore has been found west of the west end line of the Gem. Generally speaking the history of the Butte vein is that they carried silver on the surface, and you got copper at depth,—I mean the copper veins. I do not mean the Rainbow lode, the Black Chief lode, or the Nettie, or the Emma. I do not mean the true silver veins, they carry silver from the surface, and do not carry copper so far as they have been developed. I was referring to properties that have developed from silver veins in depth into copper properties. The reason that you do not find copper until you get at some depth in the true copper veins, your northwest-southeast veins, is that your copper values have been leached out, and redeposited over the surface, leaving the silver there alone, down to the point where your oxidization ceases. That is what has happened in the copper veins. To my notion I see absolutely no reason whatever to preclude the possibility that we will obtain copper mineralization within the Rainbow very likely along the course of any northwest veins, traversing said Rainbow. Every geologist and engineer knows why I do not find copper clear to the surface and why you find the ores particularly enriched in depth; and from that there is no argument or analogy that the silver you find on the surface or the fact of its presence in the surface means that it has been redeposited at depth, and leached out on the surface. I make up my valuation of three and a quarter millions of dollars as the value of

the Alice property, as follows: I consider the Magna Charta three-quarters of a million; the Valdemere a quarter of a million; the Alice three-quarters of a million. I would consider that the remainder of the group would reasonably be worth a million and a half.

Q. For the possibility of finding something that never has been developed in the ground,—the possibility of finding silver or zinc or copper. Is that true? A. Taken in consideration with its position on this Rainbow ledge, very strongly mineralized vein on the surface, of considerable continuity, upon which some work has been done in times past, resulting in some values being obtained therefrom. I do not know that that ground has been mined to the 1000 foot level of everything of value in May, 1910. It has been my experience that some of the early day working was not done to a profit, that is under the conditions that obtained at that time. Certain grades of ore could not be handled economically to a profit and that since that time times have changed and that as profit has been made from ore that twenty years ago was worthless. There has been no particular changes in the treatment of silver ores in the last four or five years by the same general application of the percolating method of cyaniding ore successfully. Principally it has been done in Mexico, but it is in actual course of operation in the states here, and has achieved success. Any ore with a content of sixteen ounces of silver can be handled by that method; however, I do not know

of any sixteen ounce ore left in the Alice. If I had that property tomorrow, I would simply hold it for the purpose of making profit from it, pending the time I could get ahold of enough money myself to interest someone in its thorough development. In addition to the value of the property, I would say you would want at least two and one-half millions of dollars for the entire proposition, as a mining venture.

Q. With nothing but possibilities of any return at all,— you would have over five million dollars in the property—is that the way I understand you? A. Well, I believe such an investment would be justified in that particular case, it being situated as it is; to my notion that would justify such an investment; it would be of that large a scope. My first attention would be drawn to treating the ores that would be exposed in the workings,—the silver ores; and, second, the further development of the zinc ores, and the method of treating the ore if it is there, and the thorough prospecting of any intersecting vein especially any of the northwest series as to the copper prospects.

Q. Now start with the silver,—of course, you do not know of any silver of sufficient value now. Take your zinc,—some of it shows it is developed thoroughly,—the zinc ore bodies are developed pretty thoroughly down to the 1500 foot level, they show the base character of ore and iron manganese, fine silica. That cannot be made to pay by

any process today. You would have to set down and wait on your zinc?

A. Or experiment along the modification of known processes to achieve a separation; I would of course utilize all my efforts to perfect a method of treatment.

I naturally would go to a zinc expert and if he could not give me any hope, it would next occur to me to consult metallurgical experimenters charging them with experimenting along the line of protecting their processes,—a combination of known processes. The copper ore produced by the Badger State is the nearest copper producing property of any consequence to the Alice group. Assuming that it runs about $3\frac{1}{2}$ percent; I should imagine there would be a profit to a large operating company of a couple of dollars per ton. Assume you are mining 1000 tons a day with your own smelter, I imagine that you would make a profit with copper at 14 cents. A production of 1000 tons per day would be a pretty good production,—hitting a vein pretty hard. That would be \$2000.00 a day, \$60,000.00 a month, \$720,000.00 a year. My investment of three million and a quarter should draw interest in Montana, if safely invested, of five to six per cent; six per cent of three million is \$195,000.00.

I know some of the claims of the Lexington group. The distance easterly and westerly there on the general course of the vein between the millsite on the Adelaide ground to the west and through to the Lexington on the

east is about 1900 feet. I am not familiar with the underground workings of those claims. I know nothing of the late history of the Lexington group. That group is closer to more of the known copper producing veins than the Alice group. I thought that the excitement as to values, etc., up there had settled down in 1910 to a steady increasing interest in the general expansion of the Butte district. The height of the excitement or demand for property in that section was in 1906 or '07, thereabouts, until just of late, possibly in 1911 there was an increase again; an increased demand for property in that vicinity, or easterly thereof,—north and east of the Black Rock. That was the Black Rock buying, and the Rainbow lode development buying, the Congdons. From the more advanced state of development over on the east side it appears to me that the chances for immediately finding copper deposits are better in the Butte and Duluth and easterly from that, than in the northern portion of the district,—the Alice country. Captain Wolvin's ground is right on the projected course or strike of some of the east and west veins, and in addition he has this enormous deposit of silicious ore or carbonate,—I don't know what you call it, silicate of copper on the surface there. There is a great tonnage, I don't know how much. It has been there for years. I don't know what the group that Captain Wolvin has consists of. I know he has the Montgomery and the west half of the Altoona, and I know where the Macaroni is.

I know they are included in his group and part of the Amazon. He has about fifty acres. If I were told that he paid \$175,000.00 for that group within the last two years, I would say as to that being a reasonable price for it, that it was a gift to him. I would think that it was far less than they were worth. In placing a value on this fifty acre group at within the last two years, I would say as an undeveloped property there and as a property against which there is a common feeling as to the possible depth of any mineralization,—I would say roughly that \$100,000.00 for a twenty acre claim would be a fair price. I would consider the effect that a group together would have and would not place the value upon an acreage basis. Putting it upon an acreage basis, I put a valuation of over twenty thousand dollars an acre on the Alice group. I know the Horse Canyon ground east of Captain Wolvin's pretty well, it joins his property. It is pretty good ground and pretty well located. That claim has an acreage of about 16 acres I think. I sold my half interest in that in the last couple years for \$7500.00 Mr. Mattison representing the North Butte Company came to me and told me "I see that you have a half interest in a particular claim," mentioning the Horse Canyon, "so and so has another half interest in that, I don't care whether it is your half or the other, all I want is a half interest there," and at that time I had obtained some options for Mattison and I know absolutely,—I was instructed to notify the people I was dealing with that all that was necessary was

that Mattison obtain a small interest which would entitle him to a partition suit, and I being without money and being confronted with a partition suit, I would have taken a four bit piece and regarded myself as lucky. In my estimation, the value of that claim is \$150,000.00, but under the circumstances I sold my interest for \$7500.00. I know of other ground that has been purchased there about the same time by Mr. Mattison and I know some of the prices that he paid. I don't know any of it that brought more than \$2000.00 an acre. That included the ground immediately east of Captain Wolvin's ground, and to the north within the limits I was asked about as possibly copper bearing ground. The North Butte has picked up a big group there, and as near as I can figure out they have disbursed in cash about \$800,000.00. I should imagine that they paid less than \$2000.00 an acre for their ground except that I do not know as the stock consideration. As near as I could obtain and keep track of the different purchases, by interviewing the different people, it ran in money to about \$860,000.00, and as to further stock consideration I cannot pass on that. I have been under the impression that in cases where there was no outstanding interest to frighten anybody away, that ground was purchased right in there for something like \$2000.00 an acre, cash purchase. I am personally interested in a great many of the claims, beginning right east of the Gardens and this ground we have been speaking of, and running up over the main ridge and have

patented a great many claims there, and have expended a large sum of money in connection with them, and I am still holding them. I am, of course, of the opinion that this property is going to prove to be very valuable some day. I believe that the possibilities of Butte are not fully determined, its limitations, by far, because as a boy in all the years gone by, it has constantly been the undercurrent of opinion that we were about through in Butte, and as something has always happened to continue on the history of the camp and new discoveries were made, and that of itself, having gone through that, justifies me in expecting a great many discoveries in years to come of considerable moment. As to whether I am particularly optimistic about the conditions I have expressed my ideas of it, and will leave that to others to judge. If I had not been optimistic I would not have patented and developed that great amount of ground I have going over the hill. I have met with a lot of adverse criticisms.

As regards why I put the value of the Alice property at three and a quarter millions exactly and not three and a half millions or four or five,—to my mind it would appeal to me as a venture calling for sufficient,—for a total investment of about five million dollars. That would carry you,—possibly you would not require but a part of that, but that is my best judgment as to the value of the property, and I arrived at it as stated there, analyzing it to the best of my ability, I believe it is a fair appraisal.

Re-Direct Examination.

The acreage that I gave is the acreage that is exhibited on the map in orange. With reference to the Alice, the Eagle is about 1800 feet northerly, it does not appear upon this map, but would be in a position about two inches beyond the border. It appears on the district map. I should say it is about 1800 to 2200 feet north of Plover No. 1. That was worked for silver ore in the early days, and work was abandoned, and I went into the old workings and obtained some little ore there and was interested in sinking the shaft still further, and later was one of a number who leased therein, and during that time took out some considerable amount of silver ores. As to what is done with the ores taken from the Poser and Elm Orlu, I believe the zinc ores are to be treated by the Clark people in a plant that they have newly constructed. The copper ores of the Poser, I believe, have been marketed at custom plants, possibly Clark may have treated some of the ore at the plant, but they are not treated on the ground. They are constructing works to treat the ores for the Elm Orlu two or three miles south of town. I cannot say whether the plant is in operation now. It was to have been started by now, I know of the character of those works only in a rough way, as they have been outlined to me, but I believe it is the modification of the flotation process, and is being operated under a royalty basis from the Mineral Separation Company. They are employing some process for the reduction of zinc ores. I do not

know where I got my information about the date when the Butte and Superior first began to be operated at a profit. I cannot say even now as to when they operated at a profit. In pursuing the purpose to buy mining property of this character in a case where you found access to the lower levels, prospective purchasers for the purpose of learning anything that is shown in the lower workings, and above, naturally go to the records of the Company, preserved by the Company, or any of their officials, any reports made on behalf of the Company, or for any individual to whom they could look, or find in the possession of such reports, and following next would be the inspection of the underground workings thereof. I read over a report of Mr. Maynard on the Alice, and also one of Mr. Blake, and the bound volume of reports covering several years made by the President of the Company to the stockholders,—apparently these copies were issued to the stockholders; and in making my estimate of the value of the property, the information that was disclosed by these reports was one of the factors. There was a dispute as to the identity of the Jesse vein with the vein of the Ballaklava in the lawsuit between the Butte and Ballaklava Copper Company and the Anaconda Copper Mining Company to which I referred. My attention has been called to the fact that I projected the Jesse vein through the Alice claims, and beyond some distance in the map marked "Exhibit 2, Corry." This vein is so projected beyond the Alice ground in

the official government map for a distance of about 350 feet. I believe that Mr. Weed had charge of the work which is represented upon the government map, or performed the work, or it was done under his direction. This plaintiffs' exhibit 2, Corry, is Sheet No. 10 of Professional Paper No. 74, United States Geological Survey, and my impression is that Dr. Walter Harvey Weed did it. It speaks as of date 1912. I know that there is copper ore in the Emily vein; the general course or strike of that vein is northwesterly. I do not know of any vein in the neighborhood of the Badger State, other than the Jesse, which would be likely to produce the amount of ore which is extracted through that shaft. I spoke about the possibility of working ore carrying sixteen ounces of silver under present processes. You are to understand that it was not possible to work silver ore as low grade as that in the early days. During the last eight or ten years, leasing, under ordinary conditions, we figured that thirty ounces of silver ore was about as low grade ore as we could possibly handle; and under present processes that ore carrying as low as 16 ounces could be worked at a profit. Considering the history of the Butte camp, as I know it, from the information that I have, I would say that it was most natural to expect still remaining in the mine, ores of the upper levels of a grade lower than could be worked, when it was operated, and high enough now to be operated at a profit. I would naturally expect a class of ore in excess of 30 ounces

remaining in the levels. Anybody who undertakes to work virgin ground in Butte, takes some chances. For instance, in the case of the Pilot-Emily vein, there was a shaft 60 feet on the surface and in that was shown some copper carbonates, and other than that I do not believe I have any information personally of any other developments that would lead one to believe that there was a copper producing property there. The only kind of consideration then that anyone could take hold of a property like that and expend money for the installation of machinery and the development of the property, would be upon the belief, and with the expectation of encountering commercial bodies of some character or description. Anybody would have to figure as to ore being there on the basis of the surface; study of the surface outcrops, the adjoining property, or its position with respect to other properties. In the case of the Ballaklava, spoken of here a while ago, with reference to the ore that was disclosed in it before it was purchased, why to a depth of 80 or 90 feet in the perpendicular shaft upon the ground, there was absolutely no ore disclosed,—in fact, the vein was a very churttly lean vein, and not any too encouraging. Take the Badger State for instance, prior to the sinking of the Badger shaft, there was no opportunity to my knowledge to look into the ground and find ore in such great quantities as apparently existed, except possibly data from the producing veins elsewhere would lead anyone to sink and investigate at that particu-

lar point. I should say it is about 1800 feet from the Badger State shaft to the point nearest eastward that I know is profitably worked. It is about 1200 or 1400 feet westward from the Badger State shaft to the Alice ground. I don't recognize that there was any less chance of failure in sinking the Badger State shaft than there is in sinking the Moose shaft. Speaking of the time the Badger State shaft was started, I should judge there were not any greater prospects than so far as I was able to discern, of success in that work, than there is in the sinking of the Moose shaft. My impression is that the Butte-Superior enterprise was not a success immediately upon its inauguration, the trouble being that they were passing through a period of experimentation, perfecting a method of treatment of their ores. They commenced that I think in 1907, or shortly thereafter. In other words, my idea and impression is that they had to perfect their method of treating their ores before they were able to make a success of their enterprise. Other than the Butte and Superior people, the buying that was going on in the neighborhood of the Black Rock in the last couple of years, was being done by the Rainbow Development Company and the Butte and Duluth; that was from November, 1911, to February, 1912. I was employed by some of them,—I obtained some options and turned them to Captain Wolvin and Mr. Hays at their express authorization. This property over to the east, concerning which I was interrogated, is on the eastern edge of the local

flat, or basement, the foothills of the main range. That is approximately two and three-quarters miles from the Alice property. From the old producing region of Butte, you descend into a flat covered with wash, and then you rise upon the other side of the flat up the slopes of some foothills abutting the main range. That region is generally referred to in that country as "across the flat;" and is quite separate and distinct, from the old Butte region, and separated by this deposit of wash in the flat. The real value of that region over there has been a matter of very serious controversy for many years. The Bullwhacker is one of the best known claims in that locality. It has been worked intermittently for a great many years. A good many people have taken hold of it at one time or another. That is true with respect to portions of the Butte and Duluth, and same may hold with respect to the claims lying to the north, the Bertha, the Rising Sun and the Sarsfield. As an entirety that region is not regarded as a steady producer now. The development has not been sufficient there yet; with the exception, however, of the Pittsmont, which I will say is a developed regular producer. Its properties are more generally in the flat itself, while these others I speak of are still further beyond and eastward and up the slope. Generally speaking as to the values of property over in that easterly region, as compared with values of properties on the Butte Hill, including the Alice country, I cannot see a great difference. If the same surface connections

that appear on the flat would appear on the outcrop of the Alice, that would greatly enhance my estimation of the value of the Alice. The prices of property over in that eastern region compared generally with prices of property on the Butte Hill, including the Alice country, have been far less. The principal claim of the Butte and Superior is the Black Rock; that was worked as a silver claim in the early days.

ReCross Examination.

I would not compare any of the Alice claims in value with the Black Rock, as was shown and developed at the time the present Company took it over, excepting that the Black Rock was an original silver producer, and was and had developed considerable quantities of zinc ore,—ore that had been proven at the present time to be high enough in zinc and silver to be very profitable,—millions of tons of it. I know of an instance of an engineer giving a value of a million dollars to property that he had never been in; that was probably not the ordinary way now-a-days. Being in Butte, with the idea of a value of the property, it rests upon the individual engineer himself to make a sufficient determination of that to stand or fall upon that appraisal. Information contained in the reports I have referred to, made by Mr. Maynard and Mr. Blake, that assisted me was the fact that invariably the difficulties that were experienced were the presence of zinc ore, zinc blende, that seemed to be of very frequent recurrence; that their workings showed their deposits of zinc

blende. Such reports afforded me a further insight into what was down there, but I cannot state explicitly what particular sentence it was,—merely a confirmation of my expectancy of their finding zinc ore, which I considered to be confirmed there by their alluding to the presence of zinc ore, also in the annual reports of the president of the company there appeared a map purporting to be the underground workings of the properties of the Alice; that was of some consequence and assistance to me. I imagine everybody has known for years and years that there are large quantities of zinc in the Alice mines. One of the particular things that appeared to me in the reports was that the value, the grade of silver ore treated in their mills, was something in excess of 50 ounces; that it was somewhere around 70 ounces. I believe their average up to 1893 was always better than 16 ounces in silver.

There is a vein exposed in the Emily workings, which has been alluded to as their vein. The Emily vein has been drifted on the 1800 and 2000 foot levels of the Pilot to the west. I surveyed those levels out to that extreme west end. I do not attach any significance to the Emily vein from my knowledge of it, in connection with the Alice properties exactly, except it is a northwest vein, and has some copper ore. If you go from a width of 20 feet from the plane of the Pilot shaft westerly, still in the Pilot ground, and your vein has gotten down to two feet, it would not be very favorable to the Alice ground, without further

work. With reference to the sinking of the Badger State shaft, I expressly stated that the planning of that was evidently finally confirmed by knowledge of the underground workings elsewhere; but that upon the surface itself there was a sufficient showing to investigate. I imagine there was sufficient shown at the point where the Badger State shaft now is to justify work. I do not know of a mining company in Butte putting down a shaft 2000 feet without crosscutting and knowing something of what is under it, that would probably be very unusual. As to the Pilot, there are a number of pretty strong looking veins showing on the surface. There had been a great deal of work done in the Elm Orlu before the Pilot was struck. There was also work done upon the Berlin; I believe there were crosscuts all through the Berlin on different levels. I made a private report upon the Pilot to the owner that was later used and incorporated in the statement to the purchasers. I base my advice as to the Pilot wholly upon its location and surface showing. I would not claim that the whole of the expenditure upon the Pilot was done wholly upon my recommendation, but that was a factor in it, because that was used. The Mountain Chief was quite a famous property in the early days. The Anaconda Company must also have had workings to the westerly of the Ballaklava at the time they started, but I don't know of that personally. I spoke about this ground to the east, over there around the Wolvin ground, being separated from Butte by a deep val-

ley,—a wash there. In my belief the wash hasn't anything to do with the geological conditions. You do not get veins in the wash anywhere. The Pittsmond shafts are pretty well over on the eastern side there. They approach closely to the flank of the hill, as much as 900 or 1000 feet. That is between the Butte and Boston Placer. At different points in the Butte and Boston Placer, they have got a good ore showing. North of that, and easterly of the Pittsmond shafts, is the Tropic shaft, which is pretty close to the hill. I believe that the non-co-ordinate veins do extend continuously from Butte into the main range; that is, it is not possible for me to co-ordinate them. Generally I am of the impression that the veins go right through the flat and right through the main range. I have no doubt that they are ore bearing and will prove to be ore bearing. There has been no such amount of development on the east side as there has been on the Alice. The nature of the development on the eastern portion is shallow. The East Butte, formerly the Pittsmond shaft, the Tropic, and the Ida Mountain, are producing good ore. If I had this showing on the Alice, that I had on the east side, I would add still more to it and vice versa, if I had the Alice vein on the east side, with the showing that is observable on the east side, I would add still more to it. The Alice worked out to a depth of 1500 feet on the east side, with those surface showings would in all probability be a producing property. Exhibit 1, Corry, is a copy of our 1905, Harper-Macdonald

map, since which time there has been additional claims and an entire re-arrangement of the ownerships, and plaintiffs' exhibit 1, Corry, does not attempt to set that forth.

Re-Direct Examination.

There was a considerable area around the Butte and Boston Placer patented as placer ground, and subsequently contentions arose between claimants claiming quartz leads and the placer patentees. There are no veins over there that I know anything about of any such size, for instance, as the Rainbow lode. Silver Bow Creek is between Butte Hill and this eastern country. Years ago I remember there being a general impression that the copper producing area was bounded by the Silver Bow Creek on the east. The Reins Copper Company was operating just east of the Creek.

Re-Cross Examination.

It has been later disclosed that Silver Bow Creek did not have anything to do with the ore bodies. I have notes of veins running out, years ago, beyond the limits of that creek.

Re-Direct Examination.

There was a theory that Silver Bow Creek marked the fault cutting off the vein.

[Testimony of Walter Harvey Weed, for Complainants.]

WALTER HARVEY WEED, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Direct Examination.

My name is Walter Harvey Weed; I live at

Houghton, Michigan. I am a geologist and mining engineer, and have followed that work since 1883. I am a graduate of the School of Mines in that year, and immediately took up the work as Assistant Geologist on the United States Geological Survey in Yellowstone Park; I maintained my connection with the United States Geological Survey, and also as geologist, until the year 1906; in the course of that work I was first assigned to the investigation of the Yellowstone Hot Springs, and afterwards to an investigation of the coal deposits of Montana, and that was followed by special investigation of the ore deposits of the Little Belt and detailed investigation of the Marysville region, and detailed investigation of the Butte, Montana, region; during that same period I had leaves of absence, and made many investigations in Mexico, British Columbia, particularly the Boundary Creek District, where I was employed by Mr. Samuel Untermyer in the investigation of ore deposits; and have been engaged in Nicaragua, and many localities abroad,—Cuba, and so forth.

I began my study of the Butte District in 1896; I had visited previously. As a result of that work I was employed as an assistant to Professor Emmons, and as a result of the special folio work was issued by the United States Geological Survey. Since severing my connection with the Geological Survey, I have been here repeatedly in connection with law-suit work, or in connection with work that was controversial to determine the apex

rights of various claims for Senator Clark, and in the Original case, the Parrot case and the Elm Orlu case, there were controversies as to the ownership of ore bodies. I made a second study of the map, first under the direction of Professor Emmons, and subsequently, after his death, I published it myself. That work extended from about 1898 until about 1905, or '06, and it was published as professional Paper No. 74, issued from the government press in 1912. The map on the board is taken from that report,—plaintiffs' exhibit 2, Corry. I can say from my investigation and experience in the Butte camp, that I am fairly familiar with the ore bodies in that section; I have had to investigate the Butte camp for the government, and this examination for Senator Clark, and also an examination for the Butte and Superior, in which my partner did much of the work, and I have had to examine and look over various groups of claims during my connection of three years or more with the so-called Lewisohns,—with the Butte Development Company, and in the course of that work I have had to pass on claims in the vicinity of the so-called East Ridge, and in the vicinity of the Butte and Superior, and northwest of the Alice. The appraisal of the value of mining property has been my business since I left the Geological Survey. During my connection with the General Development Company, I would be asked to visit certain mining properties and see if they were a good purchase for that purpose for the price

asked. The General Development Company is a large corporation with Office at 42 Broadway. Mr. Adolph Lewisohn is President, and Park Channing is consulting engineer; they took up the Colorado Dredging Company and other companies. They operated all over this country. They at one time had a bond on the property now known as the Butte & Duluth, the Montgomery, Macaroni and Altoona. That property is in the eastern part of the Butte District, in the foothills of the east range. In going about to determine the value of mining property, one investigates every particle of evidence bearing on the value of the property, that it is possible to acquire. First naturally, the surface is most carefully examined, and then the underground workings, if any, and if those underground workings are accessible, they are visited, carefully examined geologically, carefully sampled and estimates made as to the tonnage developed,—probable tonnage and what geological evidence, if any, there is in the extension in depth, noting the probable genesis of the ore in order to arrive at some conclusion as to the probability of change or not in the character and value of the ore, and all other features concerning that; if the underground workings are not accessible, and they are known to exist, and it is possible to obtain reports of the company previously operating, due weight is given to that and the maps and the assay sheets, and any other evidence which appears to an engineer to be reliable. The appraisal is based on so many

different elements that it is impossible to specify each particular item.

I am familiar with the property in controversy here, generally known as the Alice property, in Butte. I have known the Alice mine and the surrounding property since 1896. I should say, as to just what particular prominence the Alice property has in the general geology of Butte,—it has the largest and best developed silver ledge or lode of any known in this district, and one of the largest probably in the United States; it is a lode that can be traced for a long distance,—I should say, roughly speaking, a mile, and the heart of the mineralization of that lode appears to be in the center of the Alice group; it is a very great lode, which has produced, as we all know, large sums of money in silver, and a lode which, at the time I visited it, was considered to be a probable source of zinc, but was not considered very favorable for the silver values on account of the inability to treat that ore in the mill; the tract also has, if you will permit me to continue for a moment, a number of intersecting or transverse veins, coming up from the country to the southeast, which can be traced up to the Rainbow lode,—I have not traced them through it, but can be seen as a similar series of veins on the other side, and it also had a number,—it is in the direct line at least, on the extension of a number of very prominent copper producers in the so-called copper area around the developed and producing mines of Butte.

The Rainbow lode enters the property in the claim known as the Valdemere claim and passes through the Valdemere, Magna Charta and Alice claims, continues through the property of W. A. Clark, known as the Moulten claim and in my judgment is continued in the Rising Star claim. In the Alice claim it goes from one end to the other, I think, a distance of 1130 feet,—referring to plaintiffs' exhibit 1, Corry. It goes through the Alice and through the Moulten, and can be traced in my judgment through the Rising Star claim. There are a number of veins discernable in the Alice, and southeast of the Rising Star in the group of veins there with well defined fissures, shown on the geological survey sheets here and I have traced them more or less on the surface. The evidence seems clear that they pass through the Curry, Paymaster and Blue Wing claims. There is a vein clearly discernable on the surface through the Rooney, Saukie East and Saukie West; a strongly defined fissure vein and also in the Boston. As to what work is being done at the present time, on the Rainbow lode, I understand that there is no work being done, save by some lessors on what is known as the Clark Fraction, or the Fraction claim, which, according to my information and belief, is the property of the Anaconda Company; it lies in between the Magna Charta. East of this group, I have traced the Rainbow lode on the surface through the Poser claim, and by surface and underground workings through the Elm Orlu and into the Black

Rock claim. There are extensive workings on the Elm Orlu and Black Rock mine on the Rainbow Lode. The Elm Orlu is a Clark property and the Black Rock belongs to the Butte and Superior. The Butte and Superior property is being worked for zinc ore, the ore is mined containing a very small proportion of copper; the Elm Orlu property is worked both for zinc and copper. The ores in the Rainbow lode containing zinc primarily though I found ore in it in commercial quantity. I have examined the workings of the Elm Orlu. They get copper ore there, chalcopryite, bornite and a little glance, of commercial value, exceeding three per cent and running up to six and seven per cent. As mined it exceeds three per cent; the ore I saw, however, was a distinctly high grade. I should say by inspection it ran from eight to twelve per cent. Three per cent ore is regarded as commercial ore now in the Butte camp. Lower workings on the Poser are 1500 feet deep. I spoke about veins coming from the southeast, they have distinctive names, there is the first one, the most prominent one might be called the Jesse, although the vein known as the Berlin vein, and the vein known as the Emily, are turning in that direction. In other words, we have the Berlin or Snowball vein, the Emily vein, the Jesse vein, the Edith May vein, the Covelite vein, further down here, and a number of other veins, which have been opened up in the Diamond, and Bell, and Gray Rock and Corra

mines, and all turning into the northwesterly direction, bearing copper ores.

Q. Which of them have produced bountifully? A. According to general information and belief, and the statements which are contained in the reports of the North Butte Mining Company, the Jesse vein—MR. EVANS: I object to anything based on statements of the North Butte Company.

THE COURT: I think these general statements and possibly the history of the company, I think they are competent and permissible; what weight should be attached to them might be another thing. MR. EVANS: The North Butte Company's reports are simply hearsay. I will make a definite objection to any matter contained in the reports of the North Butte Mining Company, or any other private corporation not a party to the action, as hearsay and entirely incompetent.

THE COURT: I think those are all items that go to make up value; it might influence a possible purchaser. It is a question, as I say, of what weight should be given to them. The objection is overruled. To which ruling of the court the defendants then and there excepted. Without going into further detail concerning the source of my information, as to the productive character of the veins I have spoken of, the Jesse and Edith May, they have been quite productive, yielded large amounts of valuable ore. So far as my knowledge goes, with reference to workings that are on the Jesse vein, producing commercial ore, the Anaconda Company has been working what

is known as the Modoc workings. Beneath the Adelaide and Mountain Chief property and Old Joe, and they have been traced and worked through the property of the North Butte Company, and I have also seen the Jesse vein in the mine known as the Badger State mine. The Edith May I have not been able to trace underground and my information as to the position of the Edith May on the surface has been derived largely from others, and from investigation of the surface; but as to its underground extent and its course and its proximity to the Alice group, I have been obliged to refer to a publication of Mr. Reno Sales, the geologist of the Anaconda Copper Mining Company, which I hold in my hand; a copy of the map. I had recourse to that publication, informing me estimate concerning the value of the property in question, (the map above referred to was marked plaintiffs' exhibit Weed No. 1, and introduced in evidence.) This map shows what I have taken from the geology of Mr. Sales of the Butte District. The Edith May with this line extending in a general northwesterly direction dislocated by one or two faults and extended within a point of 165 feet of the side line of the Magna Charta lode claim. The Magna Charta was not depicted on the map. That has been put on at my request by Mr. Corry and in my presence, the measurements were made. This map was drawn to a scale and is approximately one inch to 780 feet. It has a north line on it and for purposes of identi-

fication, I have used the location of the shafts,—The Speculator, Modoc, Corra, and other shafts that are placed on the map. The location of the shafts in many of the veins corresponds closely to the location as given on the geological survey sheets. I checked up the distances and found them correct. I believe the location of the Magna Charta and the Magnolia, shown also on plaintiffs' exhibit No. 1, are substantially accurate. Mr. Corry did the work, and I was present during the measurements. I might add that the workings shown on this are stated beneath here to be those on a horizontal section of the Butte District, 4600 feet below these levels, and therefore, this is not an index map, but that the Edith May's vein is shown here going down with a dip marked 90 degrees, and from my own knowledge of the workings as seen in the maps of the Badger State mine, I know that the above is substantially correctly shown here, and is a nearly vertical vein. So far as possible I have studied all the available evidence with a view at arriving at a conclusion satisfactory to myself, concerning the value of this Alice property, and this is one of the lines which I have followed. In regard to the underground workings of the Alice and Moulten properties, in which I have not been underground since 1896, I was obliged to rely upon the map of the workings, which I extracted from the official report of the Alice Mining Company for the year 1884. The map is shown here and which I use merely for my general information as an engi-

neer to show how deep the workings went; or how deep they were kept, as I understand they are deeper now than shown here, to give me the course of the veins encountered, with the reports given by the different Superintendents to the presidents, and reports issued by the presidents, and based my judgment as to the value of the properties so far as that factor went. MR. EVANS: We make the same objection to that,—any statement in the reports of the Alice Company, or Alice data of any kind, or any statement or estimate of value based upon them, for the reason that it is incompetent and hearsay, and not proper evidence in the case, not connected in any way with the defendant. It is simply using the evidence of the plaintiff, the declaration of the plaintiff and its officers in favor—THE COURT: I will admit it under the usual rule; the objection will be overruled, and if the evidence is found not competent, it will be disregarded. To which ruling the defendants then and there excepted. As far as my investigation has told me, the principle ores in the Rainbow lode are silver and zinc ores. The silver ores, as such, being confined to the upper levels through the extent of the lower. By the upper levels I mean the levels extending from the surface down to approximately six or seven hundred feet at the most. As to the likelihood of copper ores being encountered in the Alice property, I would say that the northwesterly fissure shown on this map, prepared by Mr. Sales, are turning in a direction that would inevitably carry them

into the Alice property, and those fissures being well known to be part of the well known northwest, or Blue Wing system, and carry ore in shoots throughout, the veins would be very likely to carry copper ores in that property and that such would be found in the Alice property.

So far as my information goes, zinc ores became first a product of commercial significance in the Butte camp in the year 1910; in the latter half of that year the Butte and Superior Company were successful in treating their ores, and made their first profit, as I understand it. Experiments have been made for many years, hoping to utilize the base ores of the Rainbow lode. I recall that back in 1898, and later in 1906, there were men working here on that problem, and I conversed with various people who were anxious to have an option on that property, or on the ores to make experiments thereon. The success that I spoke of as attending the efforts was that achieved by the Butte-Superior Company. The works they have there constructed at the present time are quite extensive, capable of treating an output of some 500 tons a day. The ore is a concentrating ore, the concentrates are shipped to a zinc smelter at Bartlesville, Oklahoma. I have seen the works constructed by Senator Clark there in Butte. That concentrator is now in operation. Previous to the erection of that concentrator, the Old Butte Reduction Works was utilized for treating Elm Orlu ores; and was successful. Considerable progress has been made

in recent years for the reduction of zinc ores. The invention and application of the so-called flotation process largely by the Mineral Separation Company, and in this district by the old regime under Captain Wolvin of the Butte and Superior, and the much more extensive work by the recent Butte and Superior Company, under Mr. Bruce's management, has quite changed the application,—made a success of what was previously a quasi failure. Senator Clark's experiments made in the old reduction plant, extending over two years, tested every available process for the reduction of those ores; and it was found that the wet concentration process followed by flotation was the best means for treating that ore. Outside of the Butte camp, advancement in the treatment of zinc ores has been made. In Mexico a company for which I am consulting engineer, is treating the complex ore, treating that ore with old zinc,—small amount of chalcopyrite and iron, and that product is treated in the wet mill for the extraction of galena, and the galenas containing copper has chalcopyrite, and to some extent has tatrahedrite,—the lead and zinc are now out and dry, and are run through the Huff electrostatic process, and the clean product is shipped to Bartlesville and the copper and iron are shipped as a clean product to the smelter at Cananea. That process is also used at Midville, Utah, and is generally accepted as one of the means of treating complex zinc ores. There are other processes, I understand, as an engineer in looking into

the subject that electrostatic is only one of the means of extracting it, magnetic machines have also been devised, and also iron and copper can be extracted from the zinc ores. I, in consultation with Mr. Sherwood—MR. EVANS: I object to this, if the court please,—any conversation with Mr. Sherwood, or any statement based upon that. MR. WALSH: All of this goes to the question of value. MR. EVANS: If that is the rule, there is certainly no protection in your rules of evidence. Mr. Sherwood is shown to be a private engineer, and he gives his views to Mr. Weed, and if that can be the basis of value of these things, simply private conversations, views of Mr. Sherwood, I don't know what protection there is in this, and we formally object to any statements of Mr. Sherwood, or any statements of value, based upon any statements, as hearsay, incompetent, not connected with the parties to the Alice in any way, and entirely improper to be received as evidence; or as a basis of evidence in the case. Thereupon, the said objection was by the court overruled, to which ruling of the court defendants excepted. Q: You may proceed. A: You asked me what recent improvements have been made in the treating of complex zinc ores, and I was simply endeavoring to show what an engineer in the course of his professional work would find, what books—the text books are always behind time; the important advances in metallurgy have always been a year or two in advance of the text books, and it is only

by conversation with the men who are doing things that a man can find out what the big things are in advance of the public. I mention Mr. Sherwood because he showed me the result of his tests in the Butte and Superior works, which showed a successful treatment of a complex ore, and work which he informed me would enable him to handle the ores at Cananea cheaper than I was doing it, by the Huff Electrostatic process. Q: You had, I think, concluded that proposition or branch, Mr. Weed. Now, in the prosecution of your professional work, Mr. Weed, have you been required to inform yourself concerning the progress of these metallurgical experiments. In the prosecution of my professional work, I have been required to inform myself, concerning the progress of these metallurgical experiments, and from the investigation that I have given the subject, I believe that the zinc ores of the Alice mine can be successfully worked by existing processes. I believe that with the experimentation that is necessary in the inception of any new mining enterprise, that this ore could be found capable of being treated at a very much less cost than is now possible, so that they could be handled commercially. In considering the character of these ores, and as to whether they could, or could not, be treated successfully, I had access given me, which showed that in the year 1902 a large shipment of this ore, comprising 50800 tons of the zinc ore, selected because it was zinc ore, was shipped to Salt Lake

City, run through the Brunton sampler, the resultant sample forwarded to Bemis Brothers, at Bingham,—the resulting material was treated through this mill, and was then shipped as concentrates, the concentrates being 1.1 into 1; the concentrates were shipped to the American Smelting & Refining Company, at Salt Lake City, and the resulting value was \$10.30 a ton net to the shipper. MR. EVANS: May the record show that we are objecting to all of this statement as hearsay? THE COURT: This is largely hearsay, and I doubt if it has any value. You may have the same objection to all this character of testimony. To which ruling of the court the defendants then and there excepted. I got this information from Mr. Walker, at whose orders the ore was shipped by Mr. Buzzo, the Superintendent; I verified it as far as possible by the shipping returns and the assay receipt, and the smelter returns; in other words, checking each step in the process by the papers submitted. That ore was treated by old fashioned methods in vogue in 1902 and recovery of \$10.30 from the smelter made on the smelter returns. As to the likelihood of the occurrence of copper ore in the Rainbow lode itself, the sample that I spoke of had 1.4 percent of copper, and the old records, including a number of test shipments, made at various times,—seven I had shown me,—showed an average of better than 1.1 percent copper, and irrespective of the information supplied me by Mr. Walker, and by the records of the company, I believe that owing

to the mineralogical associations in the Elm Orlu mine, I believe that copper ore will be found in the Rainbow lode. In that part of the Butte camp copper veins are found to be particularly productive in depths from a thousand feet or more downward, varying in locality and according to the shoots. Some of the ore shoots do not come to the surface or to the oxidized zone. From my study of the ground, I would say that the value of that property in the early part of May, 1910, giving consideration to the values placed on the adjoining and less desirable claims, and to the other factors, which I have mentioned, I would state specifically, three million dollars. MR. EVANS: I wish to object again. Here we have another element of hearsay information—values placed upon adjoining claims—by whom, or in what manner is not disclosed. Which said objection was thereupon overruled by the court, to which ruling of the court the defendants excepted. In view of the conditions then existing, supposing that I owned the property, I should have advised against selling it at all, because what may be termed the unearned increment derived from the adjacent property, mines, enhance the value of property from year to year, and the fact that at that time no development had been carried on to the north, but that it was being rapidly brought up from the south, and also the general conditions,—I should have advised against selling the property for that figure. There has been a very material expansion of the copper producing

area of the Butte District. Originally I should place the center of the copper producing area on Anaconda Hill, including the Parrot ground. The growth and extension was northward and northeasterly in the direction that I have indicated on this geological map, extending up this way, and off to the northeast. The Alice properties lie to the northward of what I spoke of as the original center of the copper producing area; the extension has been in that direction inasmuch as the extension has been up through this direction. It has not been toward the northwest. The more recent developments, which have extended the copper producing area toward the Alice properties, are the workings in what are known as the North Butte properties, and the workings in the Badger State mine. The workings in the Pilot mine, and if you care to go still further north, in the Butte and Bacorn properties. I am familiar with the Badger State shaft. In a general way the Jesse and Badger State veins are being worked through that shaft. It is so situated that those veins could be conveniently worked. I know that a shaft is situated on the Moose claim, and is apparently being worked, but I have not been down in that shaft for many years. As to whether I have noticed any recent working there will say that the hoist is apparently being operated. The Valdmere, Moose and Edith May veins, could be worked from that.

Cross Examination.

My services were practically given to the gov-

ernment work until 1906. During that time I had leaves of absence to visit Mexico, British Columbia and Cuba, on practical mine examinations, with particular regard to the value of the mine for purchase. Those vacations averaged about three months in each year; that I was devoting to that. Up until 1906, I did not do any work of that character in the Butte District. My connection with the General Development Company was from 1906 to the latter part of 1909. I was not with the General Development Company at the time the Lewisohn Brothers sold the Jesse claim. I knew of that; Mr. Lewisohn repeatedly brought that up as an instance of ill advised geological information. I believe he blamed Mr. Channing. The General Development Company was controlled almost wholly by Adolph Lewisohn and his sons. The Jesse claim was sold by the Lewisohns about 1905, I believe. I believe, there were large ore bodies and the best veins that the Jesse veins ever showed were displayed in that claim. I do not know the price it was sold for. Mr. Lewisohn simply said that it was grossly inadequate. After my connection with the Lewisohns began they started to extend their holdings in the Butte camp, and looked into a number of properties. They took a bond and lease, and did considerable work on what is known as the Butte and Duluth. My recollection of the price is that it was \$250,000.00, that was along about 1906. At that time there was great speculative activity in the copper mining busi-

ness; copper being very high. At that time copper was selling at twenty-two and twenty-three cents. I have not been underground in the Alice properties since 1906. The development, excepting last summer's, according to my information is just about where it stood at that time. You could see as much or more in it then than you can now. I was down to the 700 foot level, I believe. The water level had risen from the one thousand foot level to there. The Rainbow lode, according to the workings and according to my inspection with Mr. Emmons, was the main development showing the greatest amount of development. The Rainbow lode through the Alice ground was pretty thoroughly developed down to the thousand foot level, as far as I saw it. My maps show there was quite a thorough development on the Rainbow down to the thousand, and the little parallel veins that were found were developed to various depths, say 700 feet. They were following, as they informed me then, the silver streaks, and they did not always develop the full width, or pay any attention to the cross streaks. The presence of zinc was regarded as a distinct detriment at that time. The Rainbow lode is large, 60 feet across in places, and it was impossible to do more than follow certain streaks. They did not attempt to develop the lode. By thorough development, I mean I would crosscut occasionally. They followed the manganese streak ten feet; to one side of the crosscut there might or might not be silver

ore, but they did not attempt to see. The development on the other lodes, outside of the strictly Rainbow lode,—the Blue Wing, the Midnight, and Curry to the south, and the Saukies to the north, showed that they were minor developments as compared with the Rainbow, being much smaller, but for a considerable period of time, I am informed, they supplied quite as much ore as the Rainbow. Some of this work was quite recent on the other claims, but more promising because they had some silver. As to the possibilities of this group as a silver property, above the 1500 foot level, I place practically no value on it at the present time, as a producer of silver ore, which were milling ores, but as a silver producer in connection with the lead and the zinc ore, I consider that it has some value. The former management, under Mr. Walker up to 1905, gave the property an energetic and intelligent working from a silver standpoint, but not from the standpoint of silver as a concentrating ore. I considered that from a free-milling standpoint, they did energetic development.

MR. EVANS: I want to offer in evidence the unchanged government folio, that I had Mr. Corry mark for identification.

THE COURT: Very well.

That map correctly showed the position of the veins through the Alice, and adjoining ground,—the Rainbow lode, as they were delineated on the folio published in 1897-8. From knowledge acquired since, I would say that it does not correctly

show them. The reason that I know it is not correct is because a careful inspection of the surface of the ground by myself at various periods in the last four or five years has shown me that the outcrops as marked and mapped by Mr. Downer in 1896, were not correctly shown, and those outcrops were not changed in the reproduction of this map, because it lay outside of the area of which I was making detailed study. Upon the Alice claims themselves there has been no surface development since 1897, except some leasing shafts, which have brought out conditions not seen before. There is evidence on the ground sufficient to my mind to justify anybody in changing the position of the Rainbow lode, as shown on the folio. One man would connect one way and one another, and the original work was done by Mr. Downer, whose connection with the survey was unquestioned, and it was not until I came to look this over that I found he had made an error. I made an examination on the Rising Star about eight or nine days ago. I was up to the Alice ground for the purpose of making an examination on the afternoon of three days and in the morning of one day. I should say I devoted three and one half hours each day to the study of the Alice ground. I was in the Pilot mine one morning until noon and again in the afternoon from four to seven. One afternoon I went over the surface of the Rising Star, the Alice and the Valdemere. One afternoon I went through the Alice and Moulten, and also in the Rising Star

and Walkerville, and another afternoon I covered ground from the Saukies and down through the Valdemere and Boston. I might add, however, that on previous occasions coming in connection with the Poser, I came through this ground,—I am quite familiar with this ground in here; not as far west as the Rising Star, although I have been over the Rising Star many times. It is a somewhat difficult matter for anyone to go up there on the surface and trace out even the approximate course of these Rainbow lodes on the surface westward from the west line of the Alice, because of the little shafts and cuts and changes. Eastward it is very hard to trace through the Clark Fraction. There is nothing that can be traced definitely through there. The Rainbow lode has been definitely and positively described by Mr. Emmons, and others as a lode with defined walls. The word lode means a cluster of veins. I should include in the Rainbow lode proper, the north vein, which is quite persistent, the middle vein and south vein; the immediate matter being broken, so that I think it constitutes one lode. I did not include those cross veins in the Rainbow itself, although I notice that other authorities have included them. When you go down to the Black Rock, it is a simple matter to tell what operations on the Black Rock vein are within the Rainbow lode.

As to the parallel north veins, I would connect up in the same way as made up on the government map—segments of the veins on the south—I

believe this to be substantially correct through here. I know the apex work and underground work correlate up pretty well to show that the vein went through the Black Rock shaft and the Elm Orlu shaft. As developed in the Moulten lode, there are three Rainbow lode veins, and in the Alice, as I recall it from the reports, there are three and sometimes four or five. The north vein joins with the middle vein at the Alice shaft coming from the west, and over at the east end line of the Alice it is supposed to be one vein, separated by clay selvages, but they constitute one vein. The Rainbow lode veins are on the east and west series and age. They are entirely distinct in geological characteristics from the northwest and southeast fissures like the Jesse, which are more recent save that there strike faults along the Rainbow lodes. I have seen in the Rainbow lode within the Elm Orlu ground, where there are cross-fissures, which would correlate up with the northwest fissure, but not any definite vein. I do not know if it did fault, the Rainbow lode; it cut through but it could not be satisfactorily determined. I could see no effect as to mineralization at that place. I might add that in 1896, the existence of these northwest fault veins was not satisfactorily determined, that is the general importance of that series was not recognized. The Mountain Chief and the Gem were recognized as ore bearing, also the Jesse. I knew during my first visits to Butte of the old Moulten Mill. As a matter of general information, the Moulten has

had about the same history as the Alice. Senator Clark has let that lie there all these years without doing anything with it, so far as I know, but has been active on the Elm Orlu both for zinc and copper. The Elm Orlu being adjacent to the Black Rock and the opening of stopes in that Black Rock, naturally he would do some work on the Elm Orlu because someone else was developing the ground for him. Senator Clark and his companies have done quite a good deal of development in the Elm Orlu. Since the burning down of the works there, I understand that they have put up a new small hoist and that lessors are working there. The Frank Moulten is practically a full claim, and it shows the Alice and has the Rainbow lode which at that point is split up into three branches, and is not as heavily mineralized. It is also split into three branches on the Alice; those branches are diverging toward the Moulten. There is a shaft on the Poser claim about 500 feet deep. My recollection of the depth of the Poser workings is 900, 1300 and 1500. I should not like to say that they show no commercial ores, zinc or copper. I have a sample, but I cannot say that it is not commercial, I did not sample it. The workings on the 1500 were run a few months ago; on the 900 and 1300 I think the work was in progress in 1913. In the Elm Orlu, since the burning down of the Clark Concentrator, they have been getting out 150 tons a day of copper. From what I saw in the Poser, I would say the ore would be zinc

and some more of it was mixed, I could not class it as copper. There is no ore there that I would care to class as copper ore, or operate myself. With reference to the Elm Orlu, I have been informed by Senator Clark's engineers and the foreman, and have seen the ore; that for a considerable period they have shipped from 50 to 150 tons of copper ore a day. I have seen stopes there, counting the sill floor, 5 feet,—35 feet wide, and the fourth floor, I think, was the highest I went. I think 150 tons a day is a pretty good production, and that was done practically every day I was up there. I base my idea of the value of the Alice on the fact that the Rainbow lode, and the Elm Orlu, both carry copper ore and, therefore, as the Elm Orlu lode is not as well mineralized as the Alice and Magna Charta, but is on the same type of fissure, therefore, there is a strong geological presumption that copper will be found. The copper ore I saw in the Elm Orlu is mined from the Rainbow lode; the Rainbow lode has stopes in the Elm Orlu that are six and eight sets wide. But not of copper ore, I saw them mining, I saw one place where they took out a carload from the Rainbow lode, but the stopes I spoke of were on a vein running north to the southeast; and on the southeast side of the Rainbow lode, about the center of the Elm Orlu claim. There is such a vein on the 1500; I believe there is some also on the 1300 but I am not sure. I understand the shipments of the Butte and Superior carry a one-fourth of one percent of copper. I do not know that any cop-

per is found in the upper levels of the Elm Orlu. I am under the belief that in the lead-silver ores of the Alice, they always find copper, and that they had that to contend with in their milling operations; and that was regarded as a detriment at that time. If the old statements concerning the Magna Charta and Alice are to be believed, the copper went from 1.1 to 2 per cent and while in those days, back in 1894 and 5 copper was a detriment, today that copper could be recovered by the electrostatic process. We are doing that with one-half per cent copper in Cananea, and we are making money out of it. The assays that I have seen are in the possession of Mr. Walker, I have seen them since I have been in Butte, I think there are seven. I saw a list of shipments in which the assays of each shipment were given. Two of these shipments were made to the Zinc company and the ore tested for copper. The first time I saw the list of shipments was two or three days ago. I refreshed my memory by looking at it last night. As to what portions of the claim these ores came from, two of them related to the cross-cut in the 500 on the Alice. I do not know where the rest came from. I think that was 1902 or 3. From the shipments shown me, I gathered that would be a fair average of the zinc ores. I have been going on the assumption that the zinc ores would carry 1.1 say, per cent of copper, which would be over twenty pounds to the ton. That would be an important factor in my conclusion as to the value of the ores in the Alice mine.

Twenty pounds of copper in that grade of ore is an item, if you can recover it. I place importance on it, but not great importance. Even if you eliminated the copper, keeping it down to a quarter of one per cent, that would not make very much difference in my idea of the value of the Alice properties; I think it it would still be worth three millions of dollars; but the copper is in the zinc ore of the Rainbow lode, and zinc ore is above the 700. The north vein carries zinc, but there is zinc all over there. The north vein is the most refractory zinc ore, and there is a great deal of iron there. My information is that they opened it up expecting to find silver. They found bundles of zinc ore up to the 500 foot level. If I were representing a buyer of the Alice group and were going to operate it tomorrow, the first thing, I should at once endeavor to develop the northwest vein going through that ground, and at the same time I would first give my attention to deep development in order to pick up an extension of the Edith May and any northwest fissures; or any fissures coming up through there, shown in Mr. Sales' map. The first development would be towards developing the veins for a copper proposition, and at the same time I would be putting some trained metallurgists to work to design a mill for the treatment of the zinc ores; I should have them experiment with these ores to see if they could better those known processes. I am satisfied that the zinc ores that come from the Alice mine, and which have been represented to

me as being an average sample of the ore in that mine can be treated at the present time by ordinary wet concentration, and oil flotation. The items in that valuation that I could treat at the present time,—one carload lot went 1.08 ounces in gold, 8.9 silver, 7.5 per cent lead, 17 per cent zinc, 7.6 per cent iron, 47.9 silica, 1.2 copper; the second carload shipped to the Empire Zinc Company is purported to have carried 1.60 gold, 9.7 ounces silver, 7.5 per cent lead, 18 per cent zinc, 7.6 per cent iron, 48 per cent silica and 1.3 copper. The shipment of 50,800 pounds shipped to Salt Lake is given me as going \$2.80 in gold, 9.1 per cent silver, 9 per cent lead, 18 per cent zinc, 12.4 per cent iron and 33 per cent silica and 1.4 per cent copper. Ore which runs 10.6 per cent iron, manganese .98, copper trace, silver 3.25 ounces, gold sixty cents, .03; lead 7.05 per cent and 14 per cent zinc, and the insoluble SiO_2 47.2, is decidedly lower, than the samples I have mentioned here. It is much lower, the silver for instance is only $3\frac{1}{4}$ ounces as compared with 9 ounces; the lead is only 7 per cent as against 9 in one case and $7\frac{1}{2}$. The zinc is 14 as compared with 18, the iron is rather high. The sample I spoke of, concentrated at the Bemis Mill went 7.4. The manganese might be troublesome in some treatments. I am not a mill man, nor do I claim to be an expert but basing my answer only on my experience with the Mexican ore, I would say that that ore might be treated by wet concentration, flotation and running the middlings over the magnetic ma-

chine. I do not care to be considered an expert on that. My impression is that a man dealing with complex ore and taking the muck out of it, it could be treated. I would be willing to spend some money treating it, putting the ore through the mill and shipping it. That is backing my belief; I believe it can be treated. All I know about Mr. Bruce's operations on the Butte and Superior is that they are very extensive, and reputed to be very profitable. I am not going on the assumption that there is a decided similarity between the Butte and Superior ores and what I might find in the Alice, because as I have seen the Butte and Superior ores, they are remarkably free from pyrite. In the Black Rock mine, I found there was a great deal of the ore there that was extremely fine, and that was one of the troubles the early management had in the treatment of the ores, because much of it had to be ground almost to a slime to get the zinc out.

I published Volume 11 of the copper hand book, and I am familiar in a general way with my article on the Butte and Superior operations. The following appears on page 179 of that book: "The ore is sphalerite with a quartz gangue, the zinc sulphide being mostly dark brown blende, mixed with some gray blende; it is friable, breaking into crystalline fragments, separating easily and amenable to concentration. The ore actually blocked out is said to have an average value of 21.7% zinc, with 7.9 ounces silver per ton." That information was derived from the official rec-

ords and statements of the company and applies to the ore that has been run through the mill. When I first visited there, they were picking out the best ore and leaving the crystalline material for later treatment. The ore that the Butte and Superior is milling and making a success upon, is this coarse crystalline ore, but the finer material they are also mining to make up the values. It is a desirable ore. Taking the analyses that I got from Mr. Walker, my assumption is that there would be a recovery of a portion of the silver in the lead concentrate; and a portion, as in this case, would be lost in the zinc. The concentrate which was acutally made from this ore carried 12.2 ounces in silver. It had been a concentration of three into one, and the actual silver recovered was 43 and a fraction percent of the silver contents of the ore. I am not confident that the silver values lie entirely in the zinc in the Alice ores. My recollection of tests made on the Elm Orlu and Black Rock ores was that all of that silver ore lay with the iron, that if a magnetic separation was made, some of the silver values would be recovered with the iron in the copper. It would make quite a difference where the silver lay. The zinc concentrates formerly made by Senator Clark were shipped to Bartlesville and then shipped back to Pueblo for silver recovery. In reducing zinc from the ore at Pueblo, I presume they lost part of the silver. I had quite a discussion as to how much was lost, and take the position that they did lose quite a bit, and to my

astonishment they showed that just a little was lost.

If I were reporting on the Alice property as to what amount a purchaser would be justified in paying for it, the first thing I would consider would be the ore in sight, if I were able to see it. As a rule the big operating companies in every case require that some ore be blocked out. In purchasing the Alice, I would not compare the position of the Anaconda Company with the position of an independent purchaser, because the information of the Anaconda Company is in advance of any other purchaser; because any other outside mine would not have access to the workings of the Anaconda mines, unless they gave it, to determine whether the northwest-southeast veins came up to the Alice and assembled. The Anaconda Company has a large and capable geological department, and I believe they are in better shape to furnish information around the Alice than any other one man or group of men. I have never had the least difficulty as a government representative, or in any other capacity in going through the workings of the Anaconda Company, they have been very courteous indeed. As to whether I have had any difficulty in going anywhere, wherever I wanted to see anything,—the last time I went down the Badger shaft, I was not allowed to see the Edith May workings south of the Jesse workings; that was last year; and my purpose was to inspect the properties in connection with the Elm Orlu, I asked to see the Edith

May, but I was informed that I should confine my examination to the north. The map furnished me was cut off at that point. Of course, as a geologist I had interest in the whole of it.

The Badger State shaft being some 2200 feet deep, the Anaconda Company is in better shape by several hundred feet than any other purchaser, who would have to make developments. There are three elements entering into the valuation of this property: First, the general reputed value of the claims surrounding these, and which have been offered to me, I will say, at from one hundred to two hundred thousand dollars a claim; the second one would be the development of the property and its known ore, if any; and the third would be its general geological conditions, and the geological probability of finding ore of a different character, or more of this character, in its extension downward, all of the factors which a mining engineering would be obliged to take into consideration. The ore in sight in the property would under my second factor, and the only developed ores that I know of in the property are the zinc ores, carrying some copper, I mention that as a minor factor. The shipment I mentioned, showed a profit of \$10.13 upon each ton of concentrates; or all that was realized from three tons of ore. I understand the freight charges were included, excepting freight from here to Salt Lake. If you had any freight, there is no profit, if you ship it from here down there; but if the mill were situated here and that ore were treated

here, it would be a different proposition. As to what I consider a fair mining charge—I had approximately \$3.00 per ton of ore left, the zinc in that being disregarded; those concentrates were paid for on the basis of gold, silver and lead. It is impossible to say just what value I attribute to the ores in sight, roughly speaking the ore in sight and the presumable ore in depth would be approximately one-third of the value of that property,—a million dollars, more or less, according to how the estimate was made. I am considering the value of the ore on these three shipments that were given me as indicative. I was not present when they were taken. I am going on the assumption that they are a fair sample of some ore in the Alice mine; I do not know how much. The ore as I saw it underground was a good zinc ore. If it were of the grade that was read to me, I would consider it of value because if the processes are so perfected, the ore might be treated by this electrostatic or oil flotation, and it would be of value. I do not know just how much, but it would be considerable. Without a thorough sampling and measurement of the workings, I could not have any definite idea of the precise tonnage of the zinc ores in the Alice. I saw 30 feet pointed out to me as the zinc ores, and walked in the levels shown on the map. I could not say, it was half a million or five million. My only source of information as to the values I would have to work with there, would be derived from the information

which was casually given me by Mr. Buzzo, that some of this ore would go 18 per cent zinc, and the remainder 40 per cent. I haven't any data on that simply the supposed average value of the ore shipped, as given me by Mr. Walker. That ore is supposed to be as represented,—zinc ore, but whether it was I do not know. I am only taking in a general way my idea as to the zinc ores, as effecting the value of the mine. In other words, I rely upon my own inspection made years ago, that it looked like good zinc ore, and upon the corroborated testimony given in the early reports of the company and upon these facts given me by Mr. Walker and different people I have talked to who have been underground. I cannot put my hand on anything specific in these reports showing the value of the zinc ores, except numerous references are made to zinc ore, and my recollection is that in one or two instances assays were given. I do not remember the names of the different people to whom I talked, but they were persons who were connected with the zinc processes and represented the zinc companies. Running back anywhere from 1898 up to within a year or two ago, I haven't seen any recently. I know nothing personally about the mine below the 700 foot level. From the best of my knowledge and belief, I should simply assign roughly one-third of the three million dollars valuation that I put on the mine, on the zinc ores in sight there, because my firm belief is there is considerable over a million tons of ore there. I spoke

roughly of a profit of a dollar a ton. The same ore gave \$13.00 on concentrates made in Bingham Canyon. As to the zinc processes now that I would subject these ores to as compared with the processes of four years ago, I think for instance that the froth flotation process was practically a novelty four years ago, and is today an accepted process. Practically the same thing is true of the static and magnetic process as far as I know. I have not looked into their history. My recollection is that in investigating the Newfoundland zinc properties, they made a contract with some Norwegian firm to handle at a profit zinc ores, almost identical with these ores. The Huff machine, however, was perfected and on the market to the best of my recollection more than four years ago. That machine has been running down in Cananea something like three years on those ores. One kind of ore can be treated in this machine and another not; our Cananea ore is not exactly like these but it is a complex ore. The Butte and Superior started their attempts to work those ores back in 1907. They were trying the wet concentration and experimenting over there through those years and started here in about 1910 with the mill at the present site, built after my examination. They did a tremendous lot of experimentation, but they were continuing the same work as at Basin. They had a froth flotation at Basin. Mr. Hyde was very successful. I was told that they were eminently successful in their operations before the present regime came in. In

1912 their mill was treating about 500 tons a day, I think; I suppose it treats a thousand now. Owing to this extremely fine ore, the Butte and Superior were experimenting from about 1907 until 1910, '11 and '12, before they got to a profitable point. I haven't any information that there are any profitable copper ore bodies in the Alice at present,—not any more than the zinc. I gave my assays on the zinc, although the reports all mentioned copper, and the assays showed copper. I am perfectly willing to accept 1.4 percent as a by-product. As to the purely copper ores I have no definite tonnage and I cannot give them; although I know generally copper ore is found there in your properties, I cannot say from my own personal knowledge. I think I said in my direct that I base my knowledge on the fact that we had those copper veins going up through that section of the country, and therefore there is a geological likelihood that they will have copper. I know of none that has been developed so far in the Alice ground. I would look for copper ores as well in the Rainbow as in the northwest-southeast veins. Finding copper ores of value in the Rainbow lode is a geological probability, because the Rainbow over in this section does have some copper in it, which so far as we can see comes in the lower level and may be greater still lower. The most northerly northwest-southeast vein, which might bear copper in the Alice ground is shown on Mr. Sales' map, which I accept as very nearly correct, and it is the Jesse shown here, which, if projected

straight, would go through the Boston and the Poser. Mr. Sales' map shows that Jesse vein breaking up into several branches going west, although he has the strong vein itself, with the exception of slight faults, continuing directly on in its course in a westerly direction, these being branches of veins coming in. The branch north of it would cross through the Poser. I have seen the Elm Orlu working going through those veins but no copper ore in that section. I would not expect to find copper ore necessarily within a very short crosscut where a vein is cut through for five, six or seven feet in length,—you might strike a barren place. Where it is cut it simply shows there is a northwest fracture coming through there. It simply shows there is not copper ore in it in that point. It does not discourage me because you have got to have barren places in your ore shoots. In all these northwest veins the ore makes in shoots and the barren places occur on strike and dip both vertically and horizontally. My last recollection as to how far west the Jesse vein contains ore is that in the Badger State they have some ore in the levels, I saw ore in the 1800. As to whether I saw ore there in commercial quantity my recollection is not positive; it is developed in the sill floor, I did not go from stope to stope. I cannot say of my own personal knowledge of having seen ore, or any definite evidence of ore in the Jesse vein of commercial value and quantity west of the west plane of the Gem claim; save as I said that I saw this good looking

vein with ore in it on the 1800. If you will allow me to assume that the Jesse vein continues through the Alice, I should say that the bearing here was through the Badger State and other Anaconda ground; that there was just as good a chance of finding it over here as there was originally, the fact that it is barren through the Badger State does not prove that the continuation of that vein will not be here. Going west there for the length of 2000 feet or so, if the vein were shown to be barren, from my standpoint it might be encouraging. I have been through the Covellite vein and it was barren. It would tend to show that the probabilities of your having ore through there some place else were good. It is discouraging to the man who owns the 2000 feet of the Jesse vein that is barren. The insistence which the geologists, Mr. Winchell and others have had in the northwest vein, was to insist that they should be explored along the strike and it took a good deal of courage to make the people develop along the strike because they would give it up. As long as the fracture contains continuity and the characteristics of the fracture were the same, with evidence of mineralizing waters of any kind passing through there, I would feel well warranted in going on. The Jesse vein to the westerly preserves its strength and general characteristics, if it is correctly drawn by Mr. Sales. The Jesse vein is drawn just as broad here as it is down there, and in addition to that he has drawn places where he has put ore shoots and changed

the width, and he has made a very careful map with all the details it is possible to put on a map. Outside of this map, I know there is a vein going through approximately that line. I cannot say offhand from looking at this map whether it is correctly drawn or not. There is a vein traceable up to that point, but up here I cannot trace it on account of the old workings. If it is splitting up, as to whether that shows that it is retaining its strength, it might and it might not; this section might be another vein entirely. I am not familiar with that section. As you go up towards the Rainbow lode, the character of the Jesse vein changes. It is true that the Jesse vein and the Edith May vein, as they go to the northwest there, their mineralization is changing and becoming more like the silver mineralization,—the contents. There is an apparent increase in zinc, but I am not familiar enough with the workings in the central section to say there is a change. I am not familiar with the North Butte workings on the Jesse. Speaking from the information obtained from the reports of the company, they had there good slopes, roughly speaking from the 900 to the 2200. I think I saw recently in the Boston News Bureau, that they struck ore again underneath that barren zone, I do not know. Assuming that below the 2200, the North Butte has found nothing of value in the Jesse, and as to whether that shows the uncertainty of that vein,—the ore shoots vary both vertically and horizontally; that ore shoot may come in here and work out on the 2200, and an-

other ore shoot come in on the 1500 and work down. Mr. Sales' paper gives an illustration of that in the High Ore. If it be a fact that in the Jesse vein you find nothing below your 2200 of value, it would not be encouraging to go down with your nice slopes to that point. My understanding is that that vein is rich to the 2200 but that is not from personal examination. The next northwest-southeast vein is the one marked here shown on the claim map of the district, as the Edith May. If the Edith May vein showed barrenness on the dip going down, when you got down to the same depth of the 2200, I would think the same of it, but the North Butte Company's report says the Edith May's vein is coming back and making good. I had some old Alice reports and I have also seen the volume which is on the table here, showing reports from 1884 to 1894, and also later reports which are on the table up to 1898, personally I know very little about the Edith May vein. I have traced what appears to be the Edith May vein on the surface nearly to the Moose shaft. There is a good strong outcrop, which can be traced at intervals and which a geologist would be warranted in connecting up. I saw that this last trip to Butte. I put in pretty long hours on that trip; there was no other alternative. If the underground developments west of the plane of the Badger State shaft have not shown anything on the Edith May, as developed, it would indicate to me that the mineralization might have jumped to a parallel fissure, or fracture some distance from

the main one. It is quite an accepted fact in mining and geology that mineralization does jump from one to another. It has been the experience that in deep levels it does jump. Supposing in the Edith May or Jesse I found a barren ore shoot, and found nothing in it, but zinc and silver, if I should find silver in the mines, I should say that you would have to go deeper to find copper, and as you go further away from the district you have to go further down to get copper. In the Mountain Chief vein, they found mineralization at the surface. I do not believe that is the Jesse vein; in other words, I think the chalcopryite vein found in the Mountain Chief is different from the Jesse. The two veins come together. There is a big strong vein in the Mountain Chief, which keeps on down below the alleged change of dip over into the other ground; and that strong vein carries its typical chalcopryite below the point where your geological department drew the change of the Jesse. In the Ballaklava Company vs. The Anaconda Company case, I thought we had a pretty strong claim there. I did not express to the Ballaklava people that I was practically hopeless. I expressed myself that a compromise was better than a long protracted lawsuit. Taking the position Mr. Corry gave to the Badger State shaft, if you will draw a crosscut at right angles to the Edith May vein and from that crosscut you run westerly to the Alice ground, the distance as nearly as I can determine is 1350 feet.

Q. I am talking about from the shaft; I had

already assumed there was nothing shown on the Edith May vein of value west of the section of the Badger State shaft?

A. There is a cluster of veins in here, one of which is not named on here, and referring to the geological survey map, there are a number of veins going up in that direction, and on this map you have the Adirondack and a vein which is not named on this map, and the Skyrme vein, and what is the South Bell vein, which is a branch of the Covellite, which have a number of northwest fractures going up to that ground, which are mineralized in this section, and presumably will be in that section.

As to which of those veins is ore bearing, the vein going into the Corra shaft is ore bearing, and so is the Covellite vein. The Covellite at certain levels had ore up to the Corra shaft, and in this ground and in certain levels it had ore west of the shaft. I do not know any of those veins west of a line approximately through the southeast corner of the Annie and Ida. In those veins from the Chief Joseph there down to the south, it is shown in the workings, which I was familiar with in 1905, and '06, which I left the survey, that they stopped when they got out of the ore, the vein of the workings was barren, in all of them to the west, because they became discouraged when the ore played out. If you told me there was considerable development to the west, and that that shows failure of ore, it would discourage me as to ore being in the Alice ground as to this extent, it

would be accumulative evidence that those sections had been developed and did not carry ore as far as you went. It would not discourage me because this Alice ground up here is peculiar ground; the Alice, Magna Charta and Frank Moulten comprise a piece of ground which itself is the center of mineralization and this may have sprayed off into the other section. There is also a possibility that an uprising solution may have left the main section. I know of no place where it has. The only place I know where one of these has cut the Rainbow lode, was a place where I know the Rainbow lode, and nothing was shown. If I found that condition from the Jesse and Edith May going west, and then a failure of mineralization, I would push it through a long section to the west. The past has shown that the timidity of the operators has caused some of the other operators to come in, like the North Butte. Such a condition would not prevent me doing the work. To me such a condition would be neither discouraging nor encouraging. Some of the veins I referred to,—if you will permit me to refer to this map,—I could see that some of them would hit the Lexington ground. I am not familiar with the Lexington ground; I have not even examined the surface carefully in recent years. I have not attempted to give a specific value to the possibility of finding copper ore in some of those Alice veins, that I have been talking about, but I consider the crossing, or at least the possible crossing, of the northwest veins to the Alice ground is an

element which adds very much to the value of the property. You cannot put that in dollars and cents, it is one of the speculative things that a man might regard as valuable. The general character of mineralization and the geological features shown there are such as to give it a great value to the mind of the geologist. I would consider that the Badger State, being on a direct continuation of the Jesse, on the North Butte workings, it was worth development and that it had a specific speculative value. The stretch of the Jesse vein through the Kentucky and Badger State would be as much on strike as you would have in the whole Alice ground, and more if you carried it through the Saukie. My other element of value was from the situation of the Alice ground, without regard to definite knowledge of mineral possibilities. In estimating the value of a group of claims, if there was no development on them I would have to go on the value of the other claims. The Daniel Quilp, which sold for \$250,000.00 does not begin to show the development of these. I understand the option was given for \$250,000.00, and \$50,000.00 paid. I examined the Daniel Quilp, and in examining it I tried to find the value of its surroundings. I was offered ground there somewhere at the rate of \$150,000.00 a claim on an eighteen months' option. I would not give that for market value, you can always get them for less for cash. Once in a while you run across an obstinate miner. I think they paid \$50,000.00 on the Daniel Quilp option and then relinquished it;

some have paid as high as \$40,000.00 and then abandoned them. A mining engineer must take those options at what they are worth, basing his opinion on what other people are paying for claims which are not as well located. The Daniel Quilp has had some good silver ore, and taking the surface it is better developed than the Alice. The Jersey Blue is a claim which I would not like to set any value on, because it is in a case in controversy now between the Butte and Superior and Senator Clark. I should say the Jersey Blue has a strategic value far in excess of its possibilities for commercial ore. Not having made a detailed examination as to the valuation of the Jersey Blue, I cannot say except that in a general way the surface indications of the Jersey Blue are like the Boston, the Boston had a producing mine and the Jersey Blue did not. I do not know what was paid for the Jersey Blue. I know where the Reins' property is, east of the Leonard, just down across the car tracks. My recollection in going down the Reins' shaft was that they had a porphyry dyke which they called the vein. If there was no fault it would go from the Leonard ground easterly right through the Reins ground. The Reins ground goes to within three to five hundred feet of the big Leonard shaft. I did not know that the sale of the Reins ground was made for \$56,000.00, but I do know that parties back east were ready to put up \$300,000.00 if they were able to get a clear title about two years ago. As far as location is concerned the Reins property is situated very

favorably. I know the Lexington group in a general way. If I were told that the Lexington property was sold for \$250,000.00, I would say with reference to its bearing on my idea of the Alice ground, so far as I personally know,—the conditions around the Lexington property are far less favorable on the surface and underground, far less favorable than the Alice. They have never developed any such zinc bodies as are said to be in the Alice. As to the speculative nature of my elements of value, when it comes to pinning them down to actual dollars and cents, I cannot say that this element has so much, and that element so much; if I would fix the whole at so much, upon anything definite in dollars and cents,—it effects the values of the claims basing it roughly at say one hundred or two hundred thousand dollars a claim, that would give me a rough estimate; adding the value of the shaft if it were in good condition would be another element, and the large bodies of zinc ores another; so we have the various elements without placing any specific value on any one. As I recall it the Alice has about twenty-two claims, and some of those fractions have a strategic value which gives them value far in excess of the mere acreage. You have less than three full claims on the Rainbow lode, and the others are of less importance; for instance, I understand the Little Maggie which was a good vein and profitable to the 700, but any valuation is always arbitrary. In rounding out your claims you may run across a refractory owner and would

have to pay him more. It is geologically probable and geologically possible that you will find copper veins in these northwest and southeast veins in the Alice. I cannot take the Rainbow lode and say it is going down to the 3000 foot level, but I believe it will. As regards my placing the value at three million instead of five, an engineer and geologist must form in his mind some definite value as to a property. I am sent out by the General Development Company to report on properties in exactly the same way, and I am asked to see whether it is a good or bad purchase at a million dollars; and in doing that in this way, I have reached the conclusion that it is worth three million. You could say that the five million was equally open to contradiction, personally I figure it at three. I would not admit that your investment would bring back nothing, because any mine that has a large mine above the water level and below, because the records speak of it,—you cannot assume that it is not worth a million dollars because the lowest estimate that you can give it would be a million dollars; that means a five million dollar investment to get it out. I am not willing to admit that you would not get more than that return back; I would say that it is a very good gamble. In submitting your report, if you have a developed mine, you figure the net values are so much and in addition you give the speculative value. I have just tried to show you that I consider the ore in the mine at the present time as a net value,—how much I cannot say specifically,

but my belief is it is in excess of one dollar a ton. My belief at the present time is that that ore could be worked without any new process, simply modifying the existing processes. You will need not less than half a million dollars for mining development; in that I am allowing for the deepening of the shaft, and for the crosscutting and for some working capital, and for some experimentation work. You have a crosscut shown on the Alice map, which goes around and comes in under the Magna Charta and upraises from the one thousand level, and it would be possible with that work, if unwatered, to extend the Magna Charta deeper. I have heard that the shaft of the Alice was still open. If I assume that the shaft is actually closed, and you cannot get below the 300, there would be an expense to reopen it. If that shaft has remained open for twenty years, and only recently caved in, I would say it was a good shaft. I do not know how much attention it has had but from the reports of the Alice Company, it has not had much prior to 1898, at least.

Re-Direct Examination.

It was the North Battle Mining Company that bought the Jesse claim from the Lewisohns. The mining engineer for Mr. Lewisohn, if it was Mr. Channing, as I understand it was, is not a geologist and had no geological data to go by, and the past history of the shaft sunk on the property had not been very satisfactory, and apparently he underestimated the actual value of the property. It has as a matter of fact become an enormous pro-

ducer. It is current talk that the Badger State was turned down by the Anaconda geologists and engineers, but I cannot verify. The Anaconda Company had an option on the entire North Butte property; the Speculator mine and the adjacent property were put up to quite a number of people who did not seem to want it, did not seem to have any faith in the ground there, including, I suppose, the Anaconda Company. The result of actual operations in the Speculator and other North Butte property, and the Badger State has completely reversed things concerning the general value of those veins, formerly they were considered very poor, now they are considered very rich. There have been economies in general mining operations in recent years in the Butte camp, consisting of mechanical improvements and in the betterment of costs all along the line, because of the introduction of electric power; the change from steam to air, and the change in the character of drills; the introduction of the small hammer drills, and quite a number of other changes, which have bettered the cost very materially; the costs to the big companies have gone down materially, and even the lessor companies have felt the lessening. In the early operation of the Alice for silver ores, the zinc and copper contents were worse than of no value, they were a detriment so that they prevented the milling of the zinciferous ores. Copper was also a detriment to the ores milled in the Alice mills in the old processes; because the reduction was made more difficult by

the presence of these ores, and they avoided sending these ores to the mill, if possible, and they were not mined. Ores containing zinc and copper have been left in the workings, for any good miner working the mine similar to the Alice, would leave them under ground rather than bring them up and increase the cost of mining. I myself have seen them there, when I went through the property years and years ago. I believe that those ores can be worked and at a profit today. I spoke of encountering one of those northwest-southeast veins reaching the Rainbow lode in the Elm Orlu. That is a vein which has not been demonstrated to be productive by any workings under it, it could not be correlated, at least I could not; nor have I found anyone who could, with any productive vein lying to the southeast. It is the only instance where I know of an intersection. The Power shaft is five or six hundred feet deep, but the Elm Orlu shaft, which is five hundred feet away, is deeper and there is a drift out from that ground. I have been through the Poser on the 1500, they have a crosscut—the big vein—but it is not drifted on,—only one streak has been. They called it the Poser level, but it is from the Elm Orlu shaft. This crosscut goes to the extreme west end line of the Poser or very nearly. My recollection is that copper was first encountered in the Elm Orlu in the 900, but other ore bodies are on the 1300, we will say, and I think the 1500. There is silver in considerable quantity in the Elm Orlu. In the zinciferous ores, it is somewhat

unequally distributed. On the deeper levels there is some high grade silver, but not as high as in the nine and eight. I am specifically leaving out the oxide ores. As far as I can find out zinc was only reached in the Alice at a considerable depth, and below the oxidized portion. Zinc ore oxidizes readily. In the Cananea mine, which I spoke of, there is a complex lead-zinc-copper ore, it is known as the complex ore. The copper and iron product from the Huff electrostatic machines is sent to the Cananea smelter in Mexico. The Inspiration property is about two hundred miles distant in Arizona. The International Smelting and Refining Company is building a smelter there, and at present there is a smelter at Globe, which is nearby. My understanding is that there was zinc found in the Speculator. I have seen zinc in almost every mine in the camp. I have seen it in commercial quantities in the Syndicate group, and I have seen it in the workings of pretty nearly every big mine in the camp, including the High Ore mine and the Anaconda. In the Ballaklava suit the contention was that a vein apexing through the Mountain Chief claim had passed downward to a depth of about 600 feet, with a nearly vertical dip, the dip being slightly north in the beginning and afterwards turning to the south. That that vein afterwards flattened and passed with a general southwesterly dip; and again at a distance of 200 feet became nearly vertical passing downward; and the Ballaklava people contended that the Mountain Chief vein went on down—briefly it

was contended on the behalf of the Anaconda Company that apex was in the Mountain Chief, and by the Ballaklava that it was in the Ballaklava claim; the Anaconda Company contending that it was a continuation of the Jesse outcrop and that the Ballaklava think it is a distinct and separate claim. In the fault veins referred to by Mr. Evans, it is necessary to sink to a depth of several hundred feet at least to find copper. This map accompanying the article of Mr. Sales, I should judge from the legends on it, gives the veins only so far as they were developed.

Re-Cross Examination.

The Sales map is a horizontal map of the plane 4600 feet above sea-level or 1500 feet below surface, and it is not purported to show the position of the apexes of these veins. Speaking of the Elm Orlu workings you have a drift on the Poser and the vein goes partially through the Poser. There is a crosscut north to the vein there, and then you practically go through the Poser claim. It shows a vein about sixty feet wide of manganese and quartz, with considerable zinc in it, in one place zinc running eight per cent, but much poorer than the Elm Orlu. The seven or eight hundred foot level of the Elm Orlu shows relative poor ore in the vein going west. I spoke of zinc in the Syndicate mines; I mean the Chambers and Green Mountain; I will say in the Pauline particularly, also in the Wake Up Jim. There are zinc veins there three or four feet thick, distinct from the copper veins. My recollection of the so-

called Big Syndicate ledge is that it is zincy as it goes in the Pauline and Moscow; and so far as those upper levels are concerned it is about through as a copper vein. The Pauline was one 1200 feet, when I was there. There it was faulted clay and aplite.

I told on my re-examination that the general impression was that you would have to go deeper on those northwest veins for copper. My recollection of the Skyrme vein in the High Ore No. 2 is that they found ore in the upper levels there, I mean on the 900. Below the 1200 they found the good ores, but nothing was found above that level. In regard to operators being obliged to go 1500 feet before they find copper ore of commercial quantity, I think that would apply to the workings of the Pilot-Butte, where they had to go to the 2200 foot, before they got it in the middle vein; in the Pilot-Butte shaft they have gone down on a northwest fault vein and have found no commercial ore until they got to the 2200. It is true there is no development there to tell that that is the top of it, but the vein has been exposed on every level above that; the levels being 200 feet apart.

(Witness Excused.)

[Testimony of **Arthur V. Corry**, for Complainants
(Recalled)]

ARTHUR V. CORRY, a witness heretofore called and sworn on behalf of the complainants, re-called for further

Cross Examination.

I was asked yesterday and made an explanation of how I came to sell the Horse Canyon claim for \$7500.00. As regards the first price I fixed on it when Mr. Mattison first spoke to me, as I remember there was no discussion on my part of any price, until it was put up to me, and I was confronted with the state of affairs, that I yesterday outlined; and in the light of that I tried of course to get a little larger price than what he had intimated and it is very likely that I stated at that time, with the full knowledge of the situation confronting me, at the rate of \$30,000.00 for that. As I said, my discussion of that wholly occurred with the absolute knowledge of the conditions confronting me, and was not based upon a true valuation of it, as I recalled yesterday, but it was based upon what I possibly might get, or he might be persuaded into paying me, but I fully knew that no matter what price was given, it would rest solely with him whether or not he would change one iota a figure that he had fixed in his mind; and was not based upon an estimate by me as to the value of that property; but it was absolutely impossible under those conditions being associated with a partner, not holding the entire interest, for me to say as to what that property would bring. My partner at the time of my negotiations with Mr. Mattison was Sister Irene McGrath, who owned the other half. Mr. Mattison purchased the outstanding interest through me, I negotiated with Sister

Angela; I told Sister Angela, that there was an opportunity to sell the property; that the offer made was far less than what it was worth; that, however, I was going to sell, and that if she wished upon consulting her advisers, whom at that time she named, and upon whom solely I cautioned her to rely, and not upon any advice upon my part, but merely upon information of her own; she thereupon consulted her adviser and informed me that she would likewise sell, being so advised by her attorney and adviser. I absolutely did not give her the impression that I thought that was a fair price; but in three separate conversations I told her that I knew and felt satisfied and had no doubt whatever that the property was worth far more than that; and that if she could wait I absolutely took the position and placed the responsibility wholly and entirely upon her, to the best of my knowledge, of giving her all possible information as to my knowledge and worth of that property at that time, which was to the effect that it was worth at least, I remember distinctly telling her at that time, under those conditions that \$30,000.00 would be a bargain cash price for that. I had not sold at the time of these conversations because I told her I was going to sell before that. Mattison told me he would pay me a commission of \$500.00 if I would get that interest at the same price.

(Witness excused.)

[Testimony of J. R. Walker, for Complainants.]

J. R. WALKER, a witness called in behalf of the complainants, being first duly sworn, testified in substance as follows:

My name is J. R. Walker; I live in Salt Lake City; I am one of the complainants in this action; I hold 2110 shares of stock in the Alice Company. I have known the Alice property since 1876, when my father bought it. My father was in the mining, banking, mercantile business,—real estate business, being a member of the old firm of Walker Brothers; a firm composed of my father and his three brothers. I have seen the map,—plaintiffs' Exhibit 1, Corry, and that properly depicts the property of the Alice Company, that being the only property I am familiar with. The ownership of the Alice group is as shown on the Alice map. If I remember correctly, the Company owns a half interest in the Saukie East and Saukie West. In the early days, I used to visit the Alice with father, when he came up from Salt Lake, beginning, I think, as early as 1883. I was twenty years old in '83. Those visits continued up until 1901, and after father's death, I made two or three visits, I think, to the property. I have been down in the mine to the 1500. I would go through the property with father and Captain Hall. Captain Hall was the Superintendent father brought up from Utah when Marcus Daly quit. He came up in 1880. Father brought Mr. Daly to Utah from Ophir. They came up in '76, that was long before the railroad. The railroad

extended just to northern Utah, and they had to stage it from there up here. I have had intimate knowledge of the operations of the property since the early eighties. I would always go through the property with father, and the Superintendent and take a general interest in it. I have been personally interested in mining properties and am now, other than the Alice. I am interested in properties in Utah, California and one in Nevada. In California, I have a property under lease and bond and another property there I am patenting. As regards the ores that were disclosed in the workings in the mine, as I visited it,—well in the early days they were working what they called the silver ores, the free ores, that is below the water level, and in the pan amalgamating mill they had to mix the oxidized ores with those ores to get a high saving, and I think that the oxidized ores extended to the best of my recollection either to the two or three hundred foot level. The ores that they milled carried gold and silver, those were the principal values. In those days we knew of those large zinc blende ledges, zinc blende ores on practically all of the levels below the oxidized zone. The oxidized zone extended to either the two or three hundred level in the mine and to the best of my recollection the zinc blende was disclosed in all the levels to the 1500. I do not know of any variation in quantity. In the early days, of course, whenever they got any of that zinc blende, in the mill, it made the bullion very base. They tried to keep it out and the free

ores that were mined occurred on each side to the best of my recollection, on each side of those big base veins. They simply left those large bodies standing there, they could not work the ores or treat them. I do not remember what significance the copper had in the ore in the early days, for at that time they were still after the free ore,—the sulphide ores. Subsequently the care of the property was placed in the hands of Captain Buzzo, I knew him. I visited the property two or three times a year while he was there with us. I had correspondence with him, concerning the condition of the property while he was there. I recall the letters that have been introduced in evidence here. In a general way and mostly from newspaper articles during this period, and down to the present time, I have kept advised of the general development of the Butte camp; and such other information in relation to the Alice as I got from the parties in charge of the property. My experience in the mining business has been such, I believe, as to make me feel that I could form a fair estimate of the value of mining property. I am now in the mercantile, real estate and mining business; the agreement regarding the large block of stock belonging to the Walker interests, that was purchased by Mr. Ryan, or the Butte Coalition, was made in September 1905, and the deal was consummated in March 1906; and my interest in the stock was one-fifth of the stock that belonged to father, I think it was 56,300 shares. I joined with the rest in the sale, although I did not

want to. M. H. Walker, who was the party who made the deal,—the escrow papers were signed by M. H. Walker, by D. F. Walker, his agent, and O. K. Lewis, representing the S. S. Walker estate. None of the names of father's heirs were on the escrow papers, but we did turn in our stock. M. H. Walker agreed to deliver between two hundred twenty-five and two hundred fifty thousand shares and without our stock he could not have done so; without my stock in the estate, he could not have done so. After my father's death M. H. Walker took more interest, father was the main mining man of Walker Brothers. Of the shares I now have, my father gave me 100 in 1880; 360 shares came from my mother's estate, and after Mr. Ryan had bid the fifteen cents a share, which was in September, 1905, in January, 1906, I bought 1650 shares, and Mr. Ryan paid the balance of the purchase money in March, 1906, about three months later. I did not sell, and still hold my individual shares, and purchased more, because I thought as soon as Mr. Ryan and the big fellows got hold of it, they would work it vigorously and make it what it should be. I certainly would not have bought any more stock if I thought they would leave it a dead one like the Walkers had. Q: Considering what you knew of the property and the development of the Butte camp, Mr. Walker, had you a desire to have the property sold at the time it was sold, in 1910? Objected to by defendants. MR. WALSH: I will inquire of the witness then, why you protested against

the sale, and why you did not want to have it consummated? MR. EVANS: Objected to as immaterial and irrelevant, and it is incompetent. Mr. Walker has not shown any qualification to testify to value. Said objection was overruled by the court, and exception noted by the defendants. Q: I want you to state why you protested against it, and why you did not want to sell. A: Well, in 1901 and 1902,—I think I was at the property both of those years, and I had gone through the property with Captain Buzzo, and we were discussing those large bodies of zinc blend ores, and I think it was early in 1902 that I instructed the Captain to take a carload sample, take it from different parts of the property at that time; I think the water was up to either the six or seven, and on that account he had to take the samples from above that point.

MR. EVANS: I object again to Mr. Walker stating these things, proving specific things that he told the superintendent to do. MR. WALSH: I want to a lay foundation; I want to prove the basis of his judgment, upon what he based his judgment concerning the value of the property. MR. EVANS: It is incompetent, irrelevant and immaterial. Thereupon the court overruled said objection, to which ruling the defendants excepted. And I think it was early in 1902, that I instructed the Captain to take a carload sample from different parts of the property,—the water at that time being either up to the six or seven hundred, and on that account, he had to take the

samples above that point,—and shipped them to me at Salt Lake and the Captain did so. He shipped me a carload of ore,—50800 pounds, which I wanted to test and see if I could make a separation, or concentration, and made a market for it. The ore was shipped to the Taylor-Brunton mill. I went down there, had the whole care sampled, and after it was sampled I had to send it to Bingham where there was a small concentrating mill, which was equipped with four jigs and two Wiffley Tables, and the boys who were operating that mill were the Bemis Brothers. They had had lots of zinc-lead ores from the Bingham camp, and they made a test. MR. EVANS: I don't know if the court expects us to renew our objections; he is going to give the results of these tests. THE COURT: He is telling you why he objects to this sale, and upon what he bases his opinion of value; I don't know that that is very material. Objection overruled, to which ruling of the court the defendants then and there excepted. MR. EVANS: So much of this is so clearly incompetent that we should not be compelled to point it out in a brief. They concentrated 3.2 tons into one, and got a product, and I got the values in a complete memorandum and the A. S. & R. receipts. The shipment was taken first to the sampling works, and the pulp sent to me, of which I made the sample of the crude ore. Exhibit 1, Walker, is the Taylor-Brunton sample, Lot 1, Concentrates, marked "Class All Assembled." It shows weight of ore 17460 pounds,

average moisture 7 per cent, which equals 1222 pounds, dry weight of ore 16238. When assembled the ore was sent to Bemis Brothers; so that you may better understand, the ore having been shipped by Captain Bruzzo to the smelting works, I went down there and had it sampled at the Taylor-Brunton place, and I have given you the return furnished by them. The pulp was then sent to me and I instructed them to ship it to Bingham to have it tested in Bemis Brothers' mill; and Exhibit 2, Walker, is the return they gave me.

MR. EVANS: It is understood that this goes in under our objection that it is hearsay?

THE COURT: Yes.

MR. WALSH: We then offer complainants' Exhibits 1, Walker, and 2, Walker, in evidence.

(Said exhibits were thereupon received in evidence and are in words and figures, as follows:)

Exhibit 1, Walker.

No. 235

The Taylor & Brunton Ore Sampling Co.

Weight and Moisture Certificate.

Alice Ore 1 Lot Concls. Class All Sampled.

Transferred from

R.R. Car No. Gross Weight. Tare. Net R.R. Cars No

W1919 48460 31000 17460 P G 60250

Weight of Ore 17460

Average Moisture, 7 per cent 1222

Dry Weight of Ore, 16238

Salt Lake City, Utah,

April 3, 1902.

"	"	"	"	No. 2	
				Sample No. 9	420 lbs "
"	2	"	"	No. 1	
				Sample No. 10	810 lbs "
"	"	"	"	No. 2	
				Sample No. 11	750 lbs "

A—Lead Streak on Tables

B—Iron " " "

C Zinc " " "

D Quartz " " "

E—Tailing Run Slimes

F Crude Ore Run Slimes

Jig ore from Crude ore No. 2 Jig.

Compartment No. 1 aa

" " 2 bb

" " 3 cc

Jig ore from Crude ore No. 3 Jig.

Compartment No. 1 ee

" No. 2 ff

" No. 3 gg

Jig ore from Crude ore No. 4 Jig.

Compartment No. 1 hh

No. 2 ii

No. 3 jj

Recrushed tailings x

Sample tailings No. 4 Jig y

Alice Ore Tailings test.

No. 4 Jigg No. 1 Compl.

Sample No. 12 640 lbs. Gross.

" " " " 2 "

Sample No. 13 2870 " "

" " " " 3 "

				Sample No. 14	1050	"	"
"	"	Table	"	1	"		
				Sample No. 15	560	"	"
"	"	"	"	2	"		
				Sample No. 16	890	"	"
"	2	"	"	1	"		
				Sample No. 17	940	"	"
"	"	"	"	2	"		
				Sample No. 18	950	"	"

Total lbs. ore made as shipped 18275 lbs. Gross

Jigg ore 8 8-10%

Table " 12.5 "

Slimes tailing & other special samples marked out but not numbered.

Ore made by No. 1 Jigg was Re-Crushed with Tailing after being Re-Jigged.

I have the returns from the American Smelting & Refining Company, same being marked "Complainants' Exhibit 3, Walker."

MR. WALSH: We offer this in evidence, complainants' exhibit 3, Walker.

MR. EVANS: We make the same objection.

(Said exhibit 3 was thereupon received in evidence, and is in words and figures as follows.)

Exhibit 3, Walker.

American Smelting & Refining Co.,

Germania Plant.

Salt Lake City, Utah, April 14, 1902.

Bought of Walker Bros.

Lot 1, Class Conc. Alice Ore.

Anaconda Copper Mining Co. et al. 841

	Ozs. Gold Per Ton.	Ozs. Silver Per Ton.	Per Cent Lead.	Per Cent Copper (Wet)
Sampled by T. H. B.				
Assay				
by Umon	.25	12.4	21.0	
Assay				
by Ellis	.25	12.0	22.0	1.1
	—	—	—	—
Average				
Assay	.25	12.2	21.5	1.1
Weight of entire lot, 17460 Lbs.				
Less moisture 7%		1222 "		
Dry weight of ore,				
		16238 Lbs. at \$10.13 per ton		\$82.25
				—
				\$82.25

This exhibit 3 shows that the concentrates produced \$10.13 net, after the charges were deducted. Exhibit 4, Walker, is an assay sheet of the carload furnished to Mr. Bruce, showing the contents of certain ore furnished by Captain Buzzo, it is dated March 22, 1902. One contains gold .14 ounces, silver 9.1 ounces.

MR. EVANS: We make the same objection.

Copper 1.4 per cent, iron 12.4 percent, zinc 18 percent, silica 33 per cent; signed Henry Rivis Ellis, charges \$5.00. This was the assay from the pulp of the carload which was shipped to Taylor-Brunton, and sampled by them before it was sent to Bingham. I made a further effort to ascertain what value the zinc ores contained, and it

was either in '91 or '92 we shipped two car-loads to the Empire Zinc Company, of Canon City, Colorado, and exhibit 5, Walker is a report or analysis on two cars of Alice ore from Butte, Montana.

MR. WALSH: We will introduce that.

(Whereupon said exhibit No. 5 was introduced and received in evidence, and is in words and figures as follows:)

Exhibit 5, Walker.

THE EMPIRE ZINC CO.
CANON CITY, COLO.

Report of analysis on—Two cars of Alice ore,
from Butte, Montana.

	Au	Ag	Pb	Zn	Fe	Si.O ₂	Cu
Car No. 3048	0.08	8.9	7.5	17.8	7.6	47.9	1.2
Car No. 3150	0.08	9.7	7.5	18.0	7.6	48.0	1.3

E. T. SATCHELL,

Chemist.

MR. EVANS: Same Objection.

I do not know what was done with that consignment of ore; this is the assay certificate I happened to have with the other papers. The exhibit marked "Exhibit 6, Walker," the three sheets,—they are the assays of the different products that were made in this mill in Bingham; for instance, No. 1, Crude sample, 3676 pounds; that gives the weight of the different products that were made and these assays are the assays of the different products.

MR. WALSH: We offer that as well.

MR. EVANS: Same objection.

THE COURT: Same ruling.

(Whereupon said exhibit 6, Walker, was introduced in evidence, and is in words and figures as follows:)

Exhibit 6, Walker.

Assay Office and Metallurgical Works.

217 South West Temple Street,

Salt Lake City, Apr. 2nd, 1902.

Samples of pulp Deposited by Alice My. Co.

Percentages,

Date: Apr. 2nd, 1902.

Marks		Gold oz per ton	Silver oz per ton	Lead per cent	Copper per cent	Iron per cent	Zinc per cent	Silica percent (mol)
No.	A	0.24	12.60	75.0	0.1			
	17	0.22	13.80	34.0	0.8	16.0	13.5	2.6
	6	0.10	9.70	16.0	0.2	24.4	13.0	4.0
	10	0.14	13.90	30.4	1.1	17.0	16.0	2.7
	13	0.16	11.20	15.5	0.4	26.0	13.0	2.8
	12	0.66	13.90	33.5	0.7	19.0	10.0	2.7
	18	0.10	12.30	11.5	2.8	17.0	27.5	2.6
	15	0.26	13.20	37.0	0.8	18.0	9.0	2.0
	8	0.22	14.30	34.0	1.0	16.5	11.0	1.9
	5	0.16	11.90	32.5	0.7	16.4	12.0	5.0
	B	0.20	12.10	15.0	0.4			
C—Zinc		0.12	9.90	0.6	2.2			
C—Silica		0.04	3.60	0.0	0.1			

Date: Apr. 4th, 1902.

No.	5	0.16	11.90	32.5	0.7	16.4	12.0	5.0
	B	0.20	12.10	15.0	0.4			
C—Zinc		0.12	9.90	0.6	2.2	9.0	40.0	12.4
C—Silica		0.04	3.60	0.0	0.1			
No.	1	0.08	10.20	16.5	1.3	15.4	23.5	10.8

E—							
Tail. R. S.	0.08	7.50	6.5	1.1	7.0	18.0	45.6
F—Crude							
Slime	0.10	9.00	8.5	1.0	8.0	18.0	41.0
Y. Tail	0.10	7.60	3.5	0.9	10.2	18.0	45.2

HENRY RIVES ELLIS.

I have been dabbling in mines for the last ten or twelve years, off and on—longer than that. By that I mean buying and selling. Q. From the information that you had concerning the Alice Mine, and your knowledge of the conditions, what do you think as to whether the thirty thousand shares of the Anaconda stock represents the fair value of that property? MR. EVANS: Objected to as incompetent, irrelevant and immaterial, the witness has not qualified. Q. What, in your judgment, was the fair market value of that property in the month of May, 1910? MR. EVANS: We make the same objection; the witness has not qualified. THE COURT: I doubt if he has. Overruled. To which ruling of the court the defendants then and there excepted. From the information that I had, concerning the Alice mine, and my knowledge of the conditions,—the only way I could place a value on it would be to take into consideration the vast value of that zinc blende; Captain Buzzo figured it one million and a half tons, and figuring the average sample that Buzzo sent me the carload of, figuring that,—I would make a very large discount,—\$30.00 gross, and one and one-half million,—I would make a discount,—I think that stock was worth \$25.00,

but without taking into consideration the chances of getting copper at depth, taking the Alice property, there are three ledges, beginning at the Valdemere through the Magna Charta and the Rising Star, over four thousand feet in length; there are three ledges there; between the Alice and the Blue Wing there are five other lodes, ledges coming in from the southeast, beginning with the Midnight, and on the north of the property there are two other ledges; taking it altogether, there are upwards of twenty thousand running feet of apex in the Alice property; you take the chances of getting copper at depth; this average sample I have is 1.4; it is higher than what the Anaconda Company is producing today; I don't consider the Alice mine today, or for a year or so past,—with zinc developments, I don't consider it is high at par, which would be ten million dollars for the property.

Cross Examination.

I think I was elected a director of the Alice Company in 1884. At one time I was Vice-President. After father's death, my uncle, M. H. Walker, succeeded father, and I was put in as Vice-President. My father died in January, 1901. From 1901, until this deal was made with Mr. Ryan and consummated in 1906, I was Vice-President of the Company. The Alice property was originally owned by my father and his three brothers,—The Walker Brothers. I think the Company was incorporated about 1880 or '81, my father becoming the President and active head of the Company. He had had a great deal of mining experience. He

had mined in Utah, at Ophir, Park City, and Bingham. Mining was not his chief business, he was interested in the banking, mercantile and real estate business. My father came to Butte very frequently until the shut down of the Alice properties, and kept in touch with them in Salt Lake. If I remember correctly the mills were closed down in either 1893 or 1894, and after that it was just a question of lessors or tributors selling ore to the smelters. During the time the Alice mine was operating, my uncle M.H. Walker, paid but little attention to the property, father was the main man. M. H. Walker was Vice-President and on my father's death succeeded him as President, and gave what attention was necessary to the Company. He is still living.

I think it was early in 1902 that I obtained these samples from Mr. Buzzo. I had been up to the property and talked it over with the Captain. We went down and looked at these bodies of zinc blende ore, above water level. At that time the water stood at the six or seven hundred; and the Captain figured out, took the gross value of those zinc ores,—he figured it \$30.00 and he estimated there was at least one and one-half million tons in the property. I instructed him to send the samples down instead of my uncle, the President, because I was looking into the zinc ores at that time. Zinc ores were going better than fifty per cent and were marketable. I told the Captain to take the carload of samples from all levels where he could get it above the water levels, and from all

the faces. Take it in the Alice, every crosscut that was driven north from the shaft was through these three ledges. To the best of my recollection, the zinc ores were in the north ledge. The crosscut is driven north and the levels are driven each way. In some places the north and middle veins were close together, in the Magna Charta they were a considerable distance apart, and in the Alice much closer. I do not think they ever join, I don't remember, it is such a long time ago. The weight of the car of concentrates was 50800 pounds gross. Returns on that ore were \$10.13, after taking out the charges. I have already given the different values. In shipping ores of that class, you could not make any money on that ore, but I was figuring on getting a process and having a plant at the mine. Taking this ore as it stood and shipping it to Salt Lake and having it concentrated, and the concentrates shipped where you pay \$3.20, you would lose money on it just the same as if the Anaconda Company shipped its ores to Salt Lake. The Alice ore is blocked out and you have your shafts and crosscuts; and with a little repairing, and the levels run, you would mine that ore for \$2.00 a ton, and put it on the surface, and in that grade of ore you have got gross \$33.68. Shipping that ore to Salt Lake, I was not trying to find if I could make money on it, I was trying to find out if we had a marketable product. This \$10.13 does not show that there would have been a profit on that ore shipping it. You would have to own your own plant and make

a success of it. I make the gross value of the ore \$30.00,—without zinc \$27.38 in the concentrates. I will tell you the way I figured; 90 per cent of the gold, and figuring gold at \$20.00, that is \$4.20, the sample went .25 gold in the concentrates. Figuring the value is \$29.30 gross, I figured that zinc, which is in this concentrate,—there was a product there, 40 per cent zinc, that I threw away and did not keep any track of threw it away simply because at that time we had to have zinc above 50 to be able to sell it. The separation process would have come later on. That part of the profit, this \$10.80 was just the net returns from the smelter. I got that assay of \$29.00 or \$30.00 from plaintiffs' exhibit 4, Walker, that gives .14 gold, 9.1 ounces silver, and I figured silver at 55 cents; 9 per cent lead, which I figured at \$7.20, 1.4 per cent copper is \$3.50, at 12½ cents. I did not figure iron at all. I figured zinc at \$10.80. I wanted to know the gross value in those immense bodies of zinc ore; of course, under any process that was known at that time, you could not save or treat that zinc ore at all. The zinc and lead could not be treated together, except as shown by this test here, and if we had had a plant here, we would have been able to make a profitable saving, I mean by the concentrating test. These figures show that that water mill made a profitable saving, you would have to have the separate treatment for the zinc, you want to add the smelter charges, the difference between \$27.80 and \$10.80. They charged us on this load \$17.00 and some-

thing a ton. I do not know if there was any process known in 1901 or '02 that would enable us to save and handle the zinc, we were trying to make a sample test for this water concentration, and we were saving all the values we could, and we thought we might get the zinc up to 50. The zinc went 40 something, and a lot in iron; but since that time I do not think there is any doubt but what these processes will save that much. I do not know enough about them to go into detail with them. I communicated the result of these to the other directors, but at that time there were in the Walker family two estates, the Alice stock was non-assessable, and the probate court would not allow the heirs to put up any money. The Alice was simply a dead one, and later on at the time of the sale, that is the reason I joined the others. One reason was to enable it to turn over to Mr. Ryan the amount of stock he held the bond on. If I had not turned in, he could not fulfill his contract. My personal stock I kept out and three months before Mr. Ryan consummated the deal, I bought 1360 shares, and I thought that he would work that vigorously. I think my uncle held 51200 shares in the Alice at the time of the deal with Mr. Ryan; and he is quite a wealthy man outside of that. Prior to the Ryan deal, I think the Alice stock had been dormant. After that deal I saw quotations on that stock up to seven and eight. My stock was not for sale. At the time I bought, I paid something over two for the 1650 shares. I understand that this stock went to ten, but I was

not watching the stock board, I thought Mr. Ryan would get busy and work it vigorously. I think that all stocks went up about that time, the boom being more in Butte than anywhere else. As regards what I did with these returns, when I got them,—I talked to Captain Buzzo, and at that time the Alice records were kept in the old Bank of Walker Brothers. Father owned a half interest in the Walker Brothers Bank and we sold out and went to another office, and I filed these in a pigeon hole and never looked at them for sometime, nobody was paying much attention to them but myself. When the property passed under the Ryan deal, I do not think they were called to the attention of the Alice new management. The old ledger would show it, but not in detail. I never did bring these reports to the attention of the new management, because I do not think they were interested, and in the meantime I had all these old exhibits in my private files. These letters that Mr. Walsh put in evidence I got out of the old Alice files in Salt Lake, after this suit was brought. They were old Alice files and records that were not turned over to the new regime, old letters and cancelled checks, and all other papers that were not considered of any importance. There is a room full of them down there now, but they are all kept. I went through them and selected the letters that Mr. Walsh used. During those years that those letters of Mr. Buzzo show that a process was being sought for treating these ores, we were working together. I do not remember if I com-

municated this information about these assays to the other stockholders, I might have. My brother was with me, I might have talked with him or to Mr. M. H. Walker, but I have no definite recollection about it. I do not know whether that was in my protest or not, at the time of the stockholders' meeting of 1910, when it was resolved to sell the property. I did not at that time give that information to Mr. Ryan, or any of the officers of the company.

(Witness excused.)

MR. WALSH: Plaintiff rests here.

DEFENDANTS' CASE.

[Testimony of C. F. Kelley, for Defendants.]

C. F. KELLEY being first duly sworn as a witness on behalf of the defendants, testified, in substance, as follows:

My name in full is Cornelius F. Kelley. I am an attorney at law. I testified upon the temporary injunction here in this case on behalf of the plaintiffs. I stated then my connection as attorney with the different companies known as the Amalgamated Companies. I have been attorney for the different companies known as the subsidiary companies of the Amalgamated Copper Company, including the Anaconda Copper Mining Company, since about the first of January, 1901, and at different times after its organization I also acted as attorney for the Red Metal Mining Company in Montana and in the East. As attorney for these subsidiary companies in the East, I was familiar

with the history of the inception of the idea of consolidating the different companies, the property of the different corporations into the Anaconda Copper Mining Company, that is, the different companies whose properties were transferred to that company in 1910. The idea of making that consolidation I think was first conceived early in the year 1910. As I remember after the plan had been discussed and agreed upon, steps were taken at once to put it into execution. I haven't any doubt that the consolidation as carried out was not conceived until after the month of November, 1909. When that consolidation was first conceived and planned, the Alice was not thought of at that time, with the general plan of consolidation. The plan of consolidation included the transfer of the physical title to the properties of the mining company known as the Red Metal Mining company, or those properties which had formerly been known as the Heinze properties; title to these properties, as I suggest, was held by the Red Metal Mining Company; all of the capital stock, that was issued at least of the Red Metal Mining Company was held by the Butte Coalition Company. The Butte Coalition Company was a holding concern with a capitalization, as I remember it, of fifteen million dollars; the only asset which the Coalition Company had in addition to Red Metal stock was its holding of the Alice stock; inasmuch as the Red Metal Mining Company, or the Red Metal Company, it was planned, would be dissolved after the transfer of the title to the phys-

ical properties held by it, and the Anaconda stock distributed to the shareholders of Butte Coalition, it was deemed inadvisable and inexpedient to maintain so large a corporation organization merely for the purpose of carrying a stock ownership in the Alice Company, and for the purpose of avoiding the necessity of continuing the existence of the Coalition Company, it was decided to embrace the Alice properties in the general plan of consolidation. The properties of the Red Metal Mining Company were situated in the heart of the copper district in Butte, and were adjacent to and intermingled with the properties of the other corporations that were becoming a part of the consolidated Anaconda Company. On the other hand, the properties of the Alice Company were rather remotely situated, northwesterly from the copper district, or outside of what was known at that time, or in fact still is known, as the boundaries of the copper district, and it was not necessary on account of the reasons that led to the consolidation of the other properties, to include the properties of the Alice Company. I think I testified upon the temporary injunction hearing that I was present in New York at the meeting of the directors of the Alice Gold and Silver Mining Company at which the resolution was adopted for the sale of its properties to the Anaconda Company, and calling a stockholders meeting for the purpose of considering and ratifying that action of the board. I was there in the East at that time and prior to that time. The plan from the inception of the gen-

853

eral idea of consolidation was to sell the properties of the Alice Company to the Anaconda Company and at or prior to this meeting a meeting of the stockholders of the Alice Company was called, in the event that the stockholders should ratify the sale by the directors and the properties be conveyed, that there should be a dissolution of the Alice Gold and Silver Mining Company,—as a matter of fact, I think that prior to that time, the time of the Alice directorate meeting, we had represented to the New York Stock Exchange as a condition to the listing of the stock, that these subsidiary companies, whose holdings would consist of nothing but Anaconda stock, would be dissolved in order to eliminate any objection that the Stock Exchange might have to double subsidiary companies, or holding companies within holding companies. I know that was the purpose of the officers and directors of the Alice Company at and prior to the meeting calling this stockholders meeting. The record shows that the directors and stockholders meetings in connection with the dissolution of the Alice Company, authorizing a proceeding in court for that purpose were held the subsequent year, in April or May, 1911. I know of no specific cause for the delay other than that nearly everybody was pressed with a great deal of business, and I assume that the matter was simply neglected; that is all. It was not a matter that there was any particular hurry about. In the annual report of the Amalgamated Company which has been put in evidence for the year 1907,

a reference was made in connection with the operations of the Boston and Montana Company, one of the subsidiary companies, to the production of ore by the Boston and Montana, a good production, and the Red Metal Company. Referring to Complainants' Exhibit "M," it is headed this way. "At a meeting of the Board of Directors of the Amalgamated Copper Company in May, 1907, the Secretary was authorized to issue to its stockholders the following statement, together with a condensed balance sheet of the Company as of April 30, 1907." The particular statement in this report so authorized is the following: "A large and valuable ore territory in the Pennsylvania mine, mentioned in the report of last year has been developed, and at present is supplying a daily output of ore from the Boston and Montana and Red Metal Mining Company." Yes, sir, I know what mining that was. I haven't any doubt that that statement refers to a condition which existed south of the Pennsylvania mine in Butte. When the Heinze properties were acquired by the Red Metal Company, it was found that title to a great many lots in the placer claims, lots that had been previously an addition to the City of Butte, that title was vested in the Red Metal Mining Company in that same district, in the same addition, and in fact in the same blocks, contiguous lots, the title would be vested in the Boston and Montana Company, and then, as I recall it there were a number of lots in the same addition, title to which was vested jointly in the Red Metal Mining Company

and in the Boston and Montana, that is, an undivided interest. They were co-owners in these lots. At the time that the disputes between the Red Metal Mining Company and the Anaconda and B. & M. and other Amalgamated Companies were adjusted, an estimate was made of the territory, or the ground embraced within these lots, and of the amount of ore proportionately which each company would own beneath the surface of these lots. It was impossible to work these lots separately and obtain the ore therefrom, and there was a joint operation conducted from the Pennsylvania mine because it was the nearest and most accessible to the ore bodies or mineral that underlay these lots. There was a joint operation there, and a charge made against the Red Metal Mining Company for extracting and mining the ore, and the profits were divided upon the basis of the proportionate interest. I have forgotten exactly what those were. I remember that the ore was tagged separately and my recollection is that that ore was known as the Red X ore, simply as a means of designating it. There was some doubt or difficulty in resolving the ownership of these ores beneath these placer claim 1911 and made necessary some equitable division of them. In the first place, the title to the lots had been de-raigned from the original placer patentees; there were some defects, of course, in the chain of that title in instances, but that was not serious. The surface of these placer claims had been located as quartz claims; there were innumerable conflicts

not only between the placer and quartz title, but between different quartz claimants, and it would have been almost impossible to have determined, upon any basis accurately, the legal status of the title to those ore bodies, because of the differences that might have arisen regarding extralateral rights based upon these intersecting quartz claims, the ownership of which it would have been a matter of more or less difficulty to establish, if, indeed, they had any rights against the placer claimants.

Cross Examination.

I am Vice President and Managing Director of the Anaconda Company. I am not so sure that the purpose that I speak of on the part of the directors of the Alice Company to effect a dissolution of that corporation, entertained at the time that the sale of its property was authorized, was expressed in any action of the board. My recollection is as you pointed out on the hearing for the temporary injunction in this case, that the circular letter did not make any reference to that intention. No, sir, I don't think it disclosed quite clearly a purpose to hold the Anaconda stock as a permanent investment, because I know it was conceded by the opinion of the directors for the Alice Company and of myself, that under the laws of the State of Utah, the Alice Company did not have the authority to hold permanently the stock of the Anaconda Company. I did not interpret the letter to signify the purpose to hold the stock as a permanent investment. I know there was

no such intention; therefore, I think it safe to say that the letter did not disclose such a purpose. I am not aware of any written document in which that purpose was expressed if it was entertained. I have not searched the records with the purpose in view to determine when first the idea seems there to be expressed of a purpose to dissolve. I am not a member of the board of directors. I only speak with reference to conversations I had with members of the board, and I speak from the discussions I had of the entire consolidation, with which I was at that time entirely familiar. I do not recall any specific conversation with any specific director. I do recall that when the matter was taken up by the directors of the Alice Company that there was some discussion as to the power of the board of directors to sell all of the property of the company. That matter I remember was referred by some of the directors to their individual counsel, and I remember that in determining to go ahead with the plan it was thought that there could be no legal objection to carrying it out along the lines that it was carried out; in other words, that if we could convert the assets of the Alice Company into liquid shape, either in the form of stock which might be sold upon the market and converted into cash and distributed, or into shares which might be distributed proportionately among the shares, there could be no objection to the plan. That was the general plan and I am sure it was participated in by all of the directors and by counsel for the Alice Company. I

refer particularly to Mr. Garver. The firm of Shearman & Sterling was acting as attorney for the Amalgamated, and for the Butte Coalition, and in this particular matter Mr. Garver represented that company. He was a member of the firm of Shearman & Sterling. I think they had been attorneys for the Amalgamated since shortly after its organization, but I may say that in that connection Mr. Dickson, one of the directors of the company had his personal counsel advise him relative to the matter. I refer to Mr. Dickson, a director of the Butte Coalition. I remember very distinctly that Mr. Dickson said before he voted or acted upon that that he wished to be advised by his counsel as to the legality, but as to whether he did or not I merely speak from hearsay. On the conclusion of the proceedings of that meeting, at which the proposition to submit the sale to the stockholders was passed, both Mr. Thornton and Mr. Carson resigned as directors, because I think they were going abroad for an extended trip. It is my recollection they went about that time. I have never correlated the two things before. I don't think the Amalgamated was ever interested in any way in the International directly. The United Metals Selling Company owned forty per cent of the International. The Amalgamated did not own all of the stock of the United Metals Selling Company, at that time. It has since about 1911. That company is going through dissolution. The Anaconda Copper Mining Company acquired some of

its property. The International Smelting Company acquired other of its property. The International Smelting and Refining Company is a New Jersey corporation; the International Smelting company is a smelting company that has been organized under the laws of the State of Montana. The International Smelting and Refining Company owned the smelter down in Utah prior to this last transaction that you are inquiring about. The property of the International Smelting and Refining Company in Utah consisted of a smelting plant, a lead and copper smelter, at Tooele, and a short railroad known as the Tooele Valley Railway, the stock of which was owned by the International Smelting and Refining Company. The Anaconda Company has not acquired directly any of the properties of the International Smelting and Refining Company, but has acquired stock ownership in those properties in the companies that own the properties; in other words, it is a stock transaction and not a transfer of physical title. The International Smelting and Refining Company, a New Jersey corporation, was the owner of the capital stock of the Raritan Copper Works, a New Jersey corporation, The International Lead Refining Company, an Indiana corporation, the Tooele Valley Railway, a Utah corporation, and owned the physical title to a copper and lead smelting plant in Tooele, Utah, known as the Tooele plant; the title to that plant was transferred to the International Smelting

Company, a separate corporation,. That is a new company. Under a certain transaction between the International Smelting and Refining Company and the Anaconda Copper Mining Company, the Anaconda Company has acquired the stocks of these subsidiary companies that were owned by the International Smelting and Refining Company. It amounts to this, the Anaconda Copper Mining Company has acquired the stock of the subsidiary companies of the International Smelting and Refining Company. The subsidiary companies are the International Smelting Company, the Tooele Valley Railway Company, the Raritan Copper Works and the International Lead Works, of Indiana; so that really the Anaconda Company has become the holding company of those assets where the International Smelting and Refining Company was the holding company. The International Smelting and Refining Company holds no other assets except current assets, cash and things of that character, but no other physical properties, nor stocks of mining company. My recollection that the total consideration paid by the Anaconda Company was something in excess of nineteen million dollars. It was a cash transaction as far as the International Smelting and Refining Company was concerned, that is, cash, and the assumption of liabilities. The financing will be determined largely by the acceptance or to the extent that an acceptance of an offer made by the Anaconda to the shareholders of the International is accepted; the Anaconda Com-

pany made an offer to International too, but its assets had a valuation in excess of nineteen million dollars, which was the assumption of liabilities, and the other, the balance being a cash payment. In connection with the transaction, the Anaconda Company made an offer to exchange with the shareholders of International upon the basis of 3.3 shares of Anaconda for one share of International. The difference between the amount of that will be represented by the exchange thus affected and the total amount of cash that will have to be paid will govern the financing. It will contemplate not an increase in the authorized capital but in the issued capital stock. The Utah property consists of the smelter and the railroad. They do copper smelting at the International—copper and lead. The Raritan Copper Works is a corporation which owns a large copper refinery at Raritan, New Jersey, and the stock of a terminal and freight warehouse association, that is, the refinery, to which copper has been shipped for sometime past from the Amalgamated mines, that is, copper matte, for refining. Those are the works at Perth Amboy, New Jersey. The works of the lead company are at East Chicago, Indiana, a short distance outside of the City of Chicago. It is a lead refinery, to which the lead bullion from the works in Utah is shipped ~~the~~ Refining.

Re-Direct Examination.

The International Smelting Company, the successor of the International Smelting and Refining

Company, does not mine any ores; it is simply a smelting and refining company. At its copper smelter it smelts custom ores from other properties. It does not mine any copper ore or control any copper mines. Its copper operations are comparatively small; the company held a contract with the Utah Consolidated Company for the smelting of its output, and I think, it only amounts to three or four hundred tons a day of copper ores. Its lead smelter is situated at the same place, Tooele, Utah. The lead ores which it treats are all custom ores sent in by other mining operators.

Re-Cross Examination.

The total production of the Amalgamated Companies for last year, I think was two hundred and thirty-four million pounds. I don't know what the total Montana production is; that is both custom ore and ore produced by the Anaconda Company's mines. As to whether the custom ore is really a purchase and we pay the parties who offer the ores immediately upon the delivery of them to the smelter, not in all cases. In some instances we pay for the ores, buy the ore and keep the metal contents; in other instances we treat the ores on toll and deliver the metal content to the shipper. We have some very large contracts of that kind; for instance the North Butte Mining Company, which is the largest custom ore shipper to the Washoe Smelter, has its metals returned to it under its contract. Mr. Gillie could give you the figure that amounts to much better. The largest

single producer in the United States I think is the Anaconda Company, and I think it is the largest producer in the world.

(Witness Excused.)

[Testimony of James L. Bruce, for Defendants.]

JAMES L. BRUCE, a witness called on behalf of the defendants, being first duly sworn, testified in substance, as follows:

Direct Examination.

My name is James L. Bruce. I live in Butte. My business is mine manager of the Butte and Superior Copper Company. I have been managing the Butte and Superior Company's property about fifteen months. I graduated from the Colorado State School of Mines in 1901, and went from there to Leadville, where I was with the Little Johnnie mine for several months, about six months, and I went from there to Cripple Creek, and was with the firm of engineers who did the general engineering business there for three or four years altogether; spent some time in Mexico, went from there to the Flat River District in southeastern Missouri, where I was for about three years as chief engineer and general foreman. The kind of property at Flat River was lead. From Flat River I went to the Joplin District, and I was for about six years assistant superintendent and manager of various properties. The nature of the ores that were produced by the companies I was connected with at Joplin were all lead zinc ores. The class of ores produced by the Butte and Su-

perior Company are lead, zinc and silver. A large portion of my engineering and managing has been in connection with the mining and reduction of lead, silver and lead-zinc ores. I have given a great deal of attention and study to the metallurgical treatment of them. I have made some tests and computations in connection with some ores that were purported to have come from the Alice Gold and Silver Mining Company in the last two or three weeks. I saw the ores myself at the assay office of the Anaconda Copper Mining Company and at our own test plants,—the test plants of the Butte and Superior. Mr. J. C. Febles gave me the ores that I saw at our test plant. He is the head or chief chemist for the Anaconda Copper Mining Company. I made a careful physical examination of the ores that I took down to the Butte and Superior plant, and I made some concentrating tests for several purposes, in order to determine the degree to which the mineral contents were disseminated,—how finely divided they were,—what the concentration of mineral contents would be into the fines and crushing; what the characteristics of the crystalline structure were; that is, as to whether the mineral was crusty, crystal or finely crystal, and to determine particularly what minerals in the separation the silver concentrated into. Those tests were necessary in order to determine whether the ores of the Alice could be treated profitably by any known processes. I found it was a very difficult ore to treat under any known process, for three reasons

or four; a great deal of the mineral concentrates into the fines in crushing, wherein it is more difficult to separate the different minerals, in fact practically impossible to separate the iron into the zinc to any marked degree; I found also that the silver did not concentrate into the lead concentrates, but that the lead concentrates ran practically the same as the crude ore; I found that a large part of the mineral was finely crystalline, so that it could not be filtered without fine crushing, and I think I have covered the principal difficulties in connection with the concentrating. I found in reducing those ores, that practically all of the silver values go into the zinc concentrates, not all, but a very large portion of them. On the ore that was treated, the ore would have no value either in the zinc ore or concentrates on any new process. There is some silver that goes into the lead concentrate, and that would be of value. My judgment as to these results is based on the analyses and assays that were given me of the products that were produced; these were made by Mr. Febles. These results were derived from the assays by compounding certain products, and by calculating the percentages; this showed a recovery of nineteen per cent of the lead in a lead concentrate. I am referring to the results of my tests. I have the assay results upon the crude ore that I was concentrating. As given me by Mr. John C. Febles, it is as follows: The crude ore analyzed $3\frac{1}{4}$ ounces of silver, 7.05 percent of lead, 14 percent of zinc, 10.6 percent of iron; gold $3/100$ of an

ounce; manganese 98/100 of one percent; insoluble 1.42 of one percent, and a trace of copper. That was what was given me by Mr. Febles as the assay results obtained by him upon the ore which I concentrated and computed my results from. The result of my test was the production of a lead concentrate analyzing 4-84/100 ounces of silver; 3/100 gold; 34 per cent lead; 12 percent zinc; 18.05 percent iron, and an iron lead middling. In that lead concentrate product there was recovered 6.8 percent of the silver, 19 percent of the lead, 3.35 percent of the zinc and 6.7 percent of the iron. There was also made a lead iron zinc middling, analyzing 5.12 ounces silver, 10.93 per cent lead, 18.7 per cent zinc, 22.2 per cent iron. This containing 32.7 per cent of the silver, 32.2 per cent of the lead, 27.7 per cent of zinc, 43.4 per cent of the iron. There was also made a zinc concentrate. The grade of this in zinc was so low that it was hardly proper to call it a zinc concentrate. The analysis of this was 4.75 ounces of silver, 5.36 per cent of lead 22½ per cent of zinc, 12.8 per cent of iron, and the recoveries into this were on the silver 20.8 percent, lead 10.8 percent, zinc 22.9 percent, and iron 38.1 per cent. The iron concentrates into the zinc very largely, and affects the value of them deleteriously very seriously. I know the location of the properties of the Alice in Butte. My opinion is very distinct that the ore of the character of which Mr. Febles gave me cannot be treated at the present time by any known process or known method. There would be con-

siderable margin between the cost of handling it and what you would realize from it at the present time. Taking ores with the following metals in them, of the general character as to iron and the other bases that were found in the other ore: .081 per cent copper, 4.105 ounces of silver, 3827/100000 of gold, or about 76 cents in gold, 10-64/100 per cent of zinc, 5-847/1000 per cent of lead and 49-91/100 insolubles, I would say that it could not at this time be treated profitably, as it would not be as good an ore as the one treated by me. The metals that could be derived from the treatment would not be as high as that which I have given. There has been great development of processes for working low grade or base lead-zinc ores. Taking it at any time more than four years, any time prior to the first day of June, ores of the general character as to iron and bases in the analysis I have, and when containing 12 ounces in silver, two in gold, two to five per cent in lead and two to ten per cent zinc per ton, mined from the ground of the Alice Company, it is my opinion that would not have been profitable at that time. The higher the percentage of iron the more difficult it would be to make it profitable. From the appearance of the Alice ore and my experience in handling it, I would say it is quite dissimilar to the Butte and Superior ore. There is a great deal more lead in it, and a great deal more iron. It has iron pyrite. In the Alice ores, judging from the samples I had, the silver does not concentrate into the lead con-

centrates. In fact, rather the reverse, while in the Butte and Superior ores, the concentration of silver into the lead concentrates is quite marked, the silver in the lead concentrates being of value, and in the case of the sample from the Alice there is no value in the zinc concentrates, while in the Butte and Superior ores, the silver, such as can be thrown into the lead concentrates, is of considerably more value than the same amount of zinc concentrates would be. In the analysis of the crude ore that I concentrated, the sample showed 3.25 ounces. I think about 6.8 per cent of the silver that was concentrated into the lead concentrate. The silver that would be saved would be worth nothing. The amount of silver shown in the crude ore was 3.25 ounces and if that was multiplied by 6.8 per cent, that would get the amount of silver in the crude ore. It would be about .22 ounces. The value of that in the lead concentrates would be between fifty and fifty-five cents an ounce, so that the value to the crude ore would be eleven or twelve cents. Out of the 3.25 ounces, the value or benefit I would get from the crude ore would be eleven or twelve cents. As to the tests I made, this is the recovery actually made by them.

Cross Examination.

I subjected about 4500 grams of ore to the test. I don't recall how many grams in an ounce. I should say 4500 grams would be about five or six pounds. I got this ore that I subjected to this test from Mr. J. C. Febles. The part that was subjected to the test was crushed through 20 mesh. I

also had other samples said to be from the same mine, samples of larger size, for character observation. I made the test at Mr. Evans' and Mr. Gillie's request. Both asked me to examine the ores. They said that they wanted me to examine some ores that came from the Alice mine and advise them as to what the value would be at the present time and also four years ago. We talked about it for ten or fifteen minutes, I suppose. I could not recall everything that was said. That was the main part of it. They wanted to determine the value of it. There was not anything said as to how I should determine the value of it, and nothing was said as to the process to which I was to subject the ore. I took the ore that was ground to 20 mesh and made a concentrator test by tabling on a small sized laboratory Wiffley type table and sorted the products in sorting tubes, weighed the amounts of the different products, and delivered them to Mr. Febles for analysis. I don't exactly know what quantity of ore was delivered to me for the purpose of making the tests,—something in excess of the amount treated. I think I said something in excess of 4500 grams. A duplicate was kept of the sample delivered. The ore crushed through 20 mesh was given to me. I directed that it be crushed to that degree of fineness. I did not see the crushing done. It was delivered to me in that shape. That was my judgment of the size to which it should be crushed,—maximum size,—to which it should be crushed after looking at the crude ore. Before giving it to Mr. Febles for

analysis, I subjected it to concentrating tests, by tabling on a Wiffley table, and sorting in sorting tubes, and that was the product that I delivered to him after the chemical analysis, that is, these concentrates that I have told you of. All I did was to do the concentrating, and that was in the laboratory, and by means of something identical to the Wiffley table process or similar to it. That is a table, flat table, covered with linoleum, and with wooden riffles running transversely of the table, moved by a head motion at the head end,—at the end of which the feed is fed to the table. This head motion has a differential motion, which gives the table a quicker motion at the forward end of the stroke, while at the same time a sheet of water washes over the table which is inclined; the heavier mineral particles settle onto the linoleum, and the lighter gangue particles are washed downward over the mineral particles by the sheet of water over the table. It is the ordinary Wiffley table process we know of in the copper concentrates. All I did to them was the concentration and separation of these products by sorting tubes. Sorting tubes are glass tubes which are set vertically with the diminishing size of the column as it goes downward, ending in a cylindrical column of some size, with a rising tube of water passing through the tube, with a spigot to draw out such particles as settle. The sorting tube as a sorting tube, that is similar to the laboratory tube, is not in use commercially; variations of that,—different classifying apparatus, are in use quite extens-

ively, both in the concentration of zinc ores and in the concentration of other ores. These concentrates were sized over screens before sorting different products. I think any chemist who is a capable chemist would be able to do that work. Any ordinary mill man would not be able to do that kind of work correctly. I have been with the Butte-Superior people about fifteen months. The processes in vogue there have undergone change since I came. They have been developed along the same lines that they were being operated upon at that time. They were not perfect when I came there and they aren't now either. I am really looking for some improvement now. The experimentation which is thus still going on began when the concentrator was built. Operation of that concentrator was started about the middle of the year 1912. Yes, the Butte and Superior had been doing something prior to that time. They had been doing work since their organization. I believe that was in 1906 or 7. They had apparently been at work on the thing for some six or seven years. When I arrived they had not made a marked success of it. Recently we have been operating with very satisfactory results, and very largely as a result of the perfection of the process. In 1906 or 1907, there was probably not any process known by which those ores of the Butte and Superior could have been worked successfully,—at least, it was not known to the Butte and Superior Copper Company. The processes at the time they first started milling those ores

were known, but they were not so well developed. They were not known well enough so far as I am able to speak, so I could tell that I could have gone in immediately in 1907 and operated successfully as I am doing now. In other words, it was in development. I think it is possible that at some time in the future these Alice ores can be operated successfully. Yes, sir, I do know something about experimentation going on now looking to the separation of the iron in zinc ores, carrying high percentages of iron. There are a great many different processes that are being worked upon for the treatment of such ores. They are electrostatic, electromagnetic, electric smelting, electric furnace work, and various chemical metallurgical processes, the Isherwood process, Mullen process and others. We have not tried them all. Nearly all of them have attracted quite a little attention. The electrostatic and electromagnetic have acquired the greatest standing in the metallurgical world through their successful application in some cases. They are in operation in few places. There are only a few places in the United States where they are operated on this class of ores. The electrostatic is in force in the Leadville plant in Utah and one or two other places. The electromagnetic is being operated in the Franklin furnace ores in New Jersey. I have seen these processes in operation, at the Franklin Furnace. They get their ores at Franklin Furnace in the State of New Jersey. I don't know what percentage of iron they carry. It is a different character of iron al-

together. It is a different mineral from that found in the Butte ores. Iron occurs in several different minerals. It occurs in manganite and in pyrites and chalcopyrites, the different combinations. When I speak of fourteen per cent iron, I do not mean fourteen per cent occurring as the element. I mean fourteen percent of iron,—in that case occurring as ironpyrite, principally as iron pyrite. I do not know what percentage of iron there is in the ores that are worked down in Utah by the electrostatic process. That is principally iron as iron pyrite. I regard the zinc ores in the Alice mine as altogether speculative in value. I consider that they may have some future value. The huff electrostatic process is an electrostatic process wherein the faces of the sulphide particles are charged by an electrostatic current, and from this charge become magnetic. I did not try any of these processes upon these ores that were furnished by Mr. Febles. At the Butte and Superior we use two processes,—the wet concentration and also the oil flotation process. The concentration that I made was by the wet concentration. I did not try the oil flotation upon this particular lot of pulp. I know Mr. Sherwood of the Butte-Duluth. He has done some work on the concentration of zinc ores. He did the work at the Butte and Superior Copper Company. I think he came there after I went there, and remained there for sometime. He left there sometime ago and is now with the Butte-Duluth. They are working copper ores.

Re-Direct Examination.

According to my judgment, the oil flotation process would not be suitable for the Alice ores. The tests I made of the Alice ores were sufficient to convince me as to whether the ores could be profitably treated by any process that is known to my profession,—metallurgy. The electrostatic and electromagnetic accomplish the separation of the different sulphides from each other. In some instances where the process happens to be applicable to the ore, a great many ores, without any reason show no successful results. In the case of the Alice ores, the electrostatic or electromagnetic process might separate any of the three metals from the others to some extent; the separation could not be expected to be perfect. That separation can be made preliminary to the wet process or can be made subsequent to it. The electromagnetic process that is being experimented with, usually requires the roasting of the ore. As to copper ores like the Alice ores, the presence of one per cent or half of one per cent would not add to the value of the ores unless it concentrated into a lead concentrate. That amount would not be detrimental except in so far as the penalty it would bring on the zinc concentrates by reducing the grade. The result of that would be presumed to be negligible. I stated in answer to Mr. Walsh that my experiment with the Alice ^{ores} would have a speculative value upon the development of a process by someone who could work them. I do not know of any process now that is even close

to perfection to treat those ores, that would make them commercial. I cannot conceive of any tonnage being mined there that would be profitable, figuring them upon the basis of treatment of a tonnage of 500 tons a day or even a thousand tons a day. I estimate the cost of a concentrator, that would get the results that I got, for 500 tons at about \$500,000.00, and one for 1000 tons per day would be about in the same proportion—it would run from \$750.00 to \$1200.00 to a ton of concentrates per day, for the total cost.

Re-Cross Examination.

As to a sample that was 14/100 of an ounce in gold, 9-10/100 ounces in silver, 9 per cent in lead, 1.4 per cent in copper, 12.4 per cent in iron, 18 per cent in zinc, and 33 per cent silica and solubles,—I think that could be treated profitably. I would say that the margin of profit on that would probably not be large in the Butte district. The troublesome element is iron in this treatment. That iron exhibits itself principally as iron pyrite, and it is observable upon an examination. If the ore carries any considerable quantity of iron pyrites, it ordinarily shows to the observer familiar with ores of that character.

Re-Direct Examination.

I could not attempt to state how much margin approximately there would be on that class of ore that Mr. Walsh gave me, without doing some calculating upon it. I could not give you an idea very well. I should say probably under a dollar a ton, figuring three and a half for cost of mining.

I think that class of ore Mr. Walsh gave me could probably not have been handled four years ago prior to the first of June.

Re-Cross Examination.

I think there has been apparently some substantial advance during that period.

(Witness Excused.)

MR. EVANS: If the court please, we will offer the evidence of Mr. John Gillie taken on the injunction hearing, and it will be supplemented with a little testimony.

[*Testimony of John Gillie, for Defendants.*]

Whereupon the testimony of John Gillie, taken at the injunction hearing, was read in substance as follows:

My name is John Gillie and I reside in Butte. I am General Superintendent of Mines in the interest of the Anaconda Copper Mining Company. I have held that position about twelve years. My duties are such that they bring me in contact with the mines formerly owned by the six companies known as the Amalgamated interests, being the Boston-Montana, Anaconda, Butte and Boston, Washoe, Trenton and the Parrot. I was first with the Butte and Boston Company. It was in the year 1900 that I went to the Anaconda Company as General Superintendent of Mines. I have been in connection with the properties of the Alice Company since the acquisition of the interest in the Alice Company by Mr. Ryan, or the Butte Coalition Company, that was about five years ago. At

that time I assumed the Superintendency over the property of that Company, but without any definite understanding. I never obtained any portion of my salary from the Alice Company, but Mr. Ryan being interested in it, and they were his companies, I looked after some matters that came up, there were not very many of them. Shortly after Captain Buzzo died, Mr. Ryan informed me that he had an interest in the company or some of the companies, and he asked me to look after it, and I suggested the retention of Mr. Howard C. Buzzo, there, as he was familiar with the business. Mr. Carson, who was previously manager of the Red Metals Company, left about two years ago, and since that time I have been connected with the properties of the Red Metals, and have overlooked it. I was concerned in their operations or development, prior to that time in an advisory capacity, I remember in the selection of the shaft on the Tramway claim, I was consulted with reference to that. That was a claim in which the Butte and Boston originally owned a two-thirds interest. I have been in the workings in the properties of the Red Metals Company with Mr. Carson, in a sort of capacity as consulting engineer; for if we had any information from workings adjoining, it was available for him, and we could get some information from him. That is, each had access to the properties, respectively, as they saw fit to go down and examine them. Those were the properties that were formerly in litigation between the Amalgamated Companies on the one side and Mr.

Heinze's companies on the other, and they passed into the Red Metals Company, and the litigation ceased at that time; from that time on we never had any litigation with the Red Metals Company. I had nothing at all to do with the North Butte companies. I had access to their property, but I have not been on it for nearly three years. I presume I had access to all those maps, I have not examined their maps for a long time, I am satisfied with them. Our engineers visited their ground and their engineers visited our ground. Generally I keep informed of the work in the mines of the Ballaklava Company, to know where it would affect any property that we have adjoining. I know, of course, the Badger State claim, that is one of the properties that came under my general supervision. The property east of that is the Jesse claim of the North Butte Company, and east of the Jesse in the Denver and the Edna and the Parrott, and continuing on east is the Mat. I have seen maps similar to plaintiffs' exhibit 1. It is a map of the Butte district, which gives a general location of the groups and ownerships of claims. The Saukie East and Saukie West are given a color that would indicate that they are the property of W. A. Clark, but in 1910, the Anaconda Company acquired his interest in them. The Alice has had interest in them for twenty years. On the map, however, they are designated as Clark property. I know of a vein in the Butte camp following in a general way in part the course indicated by the black line on the

map, before me. This westerly extension I do not know on this black line. I know of a vein that extends in the same general direction, and extends also east of that point; we generally designate that vein as the Jesse vein of the North Butte Company, it runs clear through the Jesse claim, and also runs into the Badger State claim, and on eastward possibly to the Mountain Chief claim, or just to the north of it. I know of that vein extending through that country in that general direction, for a distance of about 2500 feet. It extends I know down through into the Adelaide claim, up into the Badger State that we know of, and it is a big strong vein, known as the Jesse vein, northwesterly and southeasterly; and in a general way pursuing the direction indicated by the black line on the map, through some of the claims. Where it is on the entire vein of the Jesse it is approximately correct. It has probably been developed 800 feet west of the Badger State, from the east end. Its identity is not known at any point, probably, excepting just near the east end of the Badger State claim. We know of the Jesse vein definitely, no more than we know it along the surface, it is pretty hard in the surface wash in that vicinity to determine the Jesse vein any more than we know of it going at least 800 feet into the Badger State claim. That is not a lone claim pursuing that general course in that neighborhood, southeast and northwest, but it is one of a series of claims. It is not the most remote of the series

in any direction, it is within the series; that is to say, there are others of the series farther north, and there are others farther south. There is a parallel fissure to the north of it known as the Berlin, which is shown on the map here, and there is a fissure in there that runs generally in the direction of the vein and parallel with it. They commenced to develop this Jesse claim about seven or eight years ago, and it became a producer of some considerable extent about six years ago. The Edith May claim is a little south of it, and there is an Edith May vein too; and running in a general way parallel to this other. There were developments on the Edith May vein as long ago as fifteen or twenty years, but it became a large producer some six or eight years ago. As to the developments upon the Edith May vein, they go westerly into the Chief Joseph claim, south of the Badger State, that is through the Miner's Union and Chief Joseph, and it is developed into the east end of the Chief Joseph at the present time. The Anaconda Company owns the Chief Joseph, and has owned it for two or three years. The Chief Joseph has only produced within recent years. I know another northwest-southeast vein, which is the next one south of the Edith May, and it passes through the Bell, Gray Rock, Wild Bill and Corra. The Corra was one of the Heinze properties, belonging to the Corra Rock Island Company, and that property was transferred at the time of the adjustment of the difficulties to the Red Metals Company, and from that Company to the Anaconda Copper Min-

ing Company. That vein has been developed probably a thousand feet westerly from the east end line on the Corra on some of the levels, not all. The claim immediately west butting up on the west against the Badger State is the Auroria, the claim west of that is the Belle of Butte. There has been considerable development on the Belle of Butte. It is down to a depth of five or six hundred feet, and the upper levels have produced a great deal of ore, say above the four hundred. It has been worked extensively for sixteen or eighteen years, and during that time it furnished silver ores to the old Silver Bow Company, the predecessor of the Butte and Boston, to be worked in their stamp mill. It has been worked ever since through lessors and tributors. The Anaconda Company got it a year ago last June from the Butte and Boston; and up to that time it remained a part of the Butte and Boston. The Auroria was a part of the Boston and Montana property and was acquired from the Boston-Montana about the same time. The Boston-Montana Company operated a copper smelter at Great Falls, and was engaged in the mining of copper at Butte from the early nineties. I think the Company was organized in 1887, and the smelter was started in 1889.

Cross Examination.

The generic term applied to the veins of this northwest-southeast series is that of fault fissures; and the veins that follow this particular direction are known generally as "Blue Vein" series. Characteristics of the veins of this series,

as developed in Butte, are that they are not generally or continuously mineralized; they are rather more in the shape of intermittent or pockety. They do not compare with the old quartz pyrite veins, or the east and west veins, as to the continuity of the mineralization through them. Many of these northwest and southeast veins are simply fault fissures that so far as disclosures have been made, contain no commercial ores of any account. Others have produced commercial ores from pockets or shoots found occasionally in the vein.

I stated in a general way that the Anaconda Company exchanged information with the North Butte Company prior to the transfer of these properties, we exchanged information of a general character with the Butte Coalition Company; that has always been the practice with properties operated by Senator Clark and it is also true today with the properties operated by the Pittsmont Company. Putting it in another way, except in so far as the Heinze properties were concerned, there has at all times been among the operators of the Butte District a mutual exchange of such general information as might prove beneficial in the operating; which goes to the extent of furnishing one another with maps, surveys, etc.; so that the practice so far as the Anaconda and the Butte Coalition Company is concerned is no different from that which has generally obtained in the Butte camp, except perhaps with reference to the Heinze properties and the Ballaklava Company. I am familiar with many of the workings dis-

closed in the underground workings made on the Jesse veins, to which my attention has been directly called. I was over the North Butte workings to the depth of the 1600, and the Badger State workings extended into the Badger State claim. The Jesse vein has not been traced on its course or strike westerly through the Badger State claim. I am familiar with the course or strike of the Jesse vein at the most westerly point, where it has been developed. If it continues along the course or strike exposed at this westerly point of development, it would probably go into the Emily or Millview, and into the Poser claim if it passes out of the Badger State. It would cut the Alice property at some point, if it maintains the strike developed at its most northwesterly end, either near the southeast corner of the Valdemere or of the Boston claim. The ore body terminates in the Jesse vein, as you proceed northwesterly along the strike of the vein where it has drifted on over near the east end of the Badger State claim for a distance of nearly 800 feet. The vein is largely on the 1200 where we made the connection with the North Butte workings. The North Butte drove out through the ore body at our request, and it extends into that claim and when the Anaconda Company sunk the Badger State and drove southeasterly it connected with the North Butte workings. There is some ore coming in again of a commercial value in the Badger State mine, so far as developed on the Jesse vein, we think on some of the other levels. The Badger State has prob-

ably shipped a small amount of ore out of the Jesse vein on some of the upper levels, but not on the 1200 where we connected with the Butte, and it was barren. I said it was barren for a distance of 800 feet southeasterly. The Belle of Butte claim lies in Walkerville, south of the Alice. It was a silver producer and was known as belonging to the silver camp; it has been operated for some fifteen or eighteen years in a small way by lessors. The Auroria claim owned by the Boston-Montana is also in that district. It has not produced for years. It may have produced a small amount in the early days.

Re-Direct Examination.

In this northwest-southeast series, the ore occurs rather intermittently; that is, there are large shoots of ore with large barren places in them. It occurs both vertically and horizontally, that is to say, you might find it on one level and on the next level below it may pinch out and you won't have it on the next level above. The fact that we do not catch it on the 1200 foot level does not cause us to despair but we go to work and develop it on some of the other levels in the Badger State. We find this vein on the thirteen and eighteen hundred foot levels in the Badger State. We have not yet got the connections definitely through on the 1800 to know that it is the Jesse, but we are pretty sure that we have it. Some of it apparently goes in at depth, and we feel that we have it on the 1800 foot level. We have got commercial ore in the Jesse vein in the Badger State, and this vein has pro-

duced stupendously in the Jesse vein itself. The claim next east of the Jesse is the Tuolumne, and in that claim the Jesse vein is producing heavily. The next claim east of that is the Adelaide, which has been producing as well from the same Jesse vein; and east of that comes the Mountain Chief and Right Bower. Those are the veins which gave rise to the controversy between the Anaconda and the Ballaklava, and the Ballaklava encountered a very good showing on that vein. The vein is not developed east of the Mountain Chief. The Anaconda Company has observed this custom of allowing Senator Clark's engineers freely to go into its workings, and he freely allowing its engineers coming into his, since he was working in the early days in the Colusa Parrot, adjoining the Anaconda claim. Since that time we have had access to his workings, and he has had access to ours. Prior to the sale of the Original and the Colusa Parrot, we had a controversy with Senator Clark, known as an apex controversy. Senator Clark never at any time admitted that there were any merits in our controversy. He was paid five million dollars when he sold out. The purchase price of the Heinze properties was ten and one-half million dollars. In a general way I kept track of the market values of the stocks of these companies. The quoted price on the Anaconda Copper Mining Company now is 38 to 40, at the time of its transfer in 1910 it was quoted at about \$50.00.

Re-Cross Examination.

I have been consulted by Mr. Buzzo from time

to time with reference to Alice matters; there being no extensive operations these were only small matters. I never advised Mr. Buzzo or the Alice Company in any way for the benefit of the Anaconda Company or to the detriment of the Alice Company.

Re-Direct Examination.

I have never received any salary or compensation of any character from the Alice Company, my compensation coming from the Anaconda Copper Mining Company.

(Witness excused.)

[Testimony of Howard J. Buzzo, for Defendants.]

HOWARD E. BUZZO, a witness called on behalf of the defendants, being first duly sworn, testified in substance as follows:

Direct Examination.

My name is Howard E. Buzzo; I testified as a witness for the defendants on an injunction hearing in this case. I am acting Superintendent of the properties formerly owned by the Alice Gold and Silver Mining Company; and have been in such position since the death of my father in September, 1906. My father's name was Thomas W. Buzzo. My father was Superintendent of the Alice Gold and Silver Mining Company from sometime in November, 1894, until the time of his death. During the time of my father's Superintendency I was employed there most of the time as a clerk or in some capacity, electrical worker, or something of that kind for a good many years. Once in a

while I worked underground. I was more or less familiar with the work that was going on while my father was there, because I was his clerk. Before coming to Butte, I had had mining experience in Bingham and Alta, Utah. The water had raised to the one thousand foot level at the time my father and I first came to Butte. My father was never to my knowledge below the one thousand foot level, because they never had the water drained below that point. During the years that I was connected with the Alice Company, I had in the year 1910, and subsequently, become familiar with the ores that were left in the mine that showed in the workings there; and had acquired acquaintance such as would enable me to know and recognize the zinc ores and their character. I do not remember the year that we suspended operations in the Pan-Amalgamation Mill. We used to pump the water, and we used it in the milling operations, but I believe we quit pumping water after we suspended operations in the mill. I believe it was around 1900 or 1901. I do not believe at any time since I have been there at the property, that there ever was any sampling below the zinc, but the four, five and six hundred levels were completely sampled during the month of March, 1910. At that time the water stood between the six and seven hundred foot levels. At that time you could go down nearly to the 700, but you could not reach the ore bodies on account of the water.—I am not sure there was a little variation, —I am not sure where it stood at the time Mr.

Dwelle's sampling was done. We did not sample anything at the 700 at the time this sample was taken, as the cage could not be let down to the 700, and I believe the water had lowered below the 700 at the time this sampling was done, but had raised above the 700 prior to that. As regards the sampling done in 1910, I had charge of the operations, but Mr. J. E. Dwelle of the Empire Zinc Company attended to the sampling, and our foreman directed the main operations and extraction of the zinc ore, which I believe they sent to Canyon City, Colorado. Ten men were employed for a few days. I went down with Mr. Dwelle every day, and I also went around with the Foreman. On these three levels on the zinc ore body every few feet samples were taken across the vein, that is I cannot say just what distance apart these were taken, but they were taken in sections right across from wall to wall. It was a complete sampling. There were other samples taken, but the samples were not as thorough as Mr. Dwelle's. 74 samples were taken by him. I believe I retained a portion of each sample. The samples were sent to the High Ore Assay Office, in charge of Mr. Febles, from the Alice shaft, in two shipments by express wagons, and one of the men who assisted Mr. Dwelle in selecting the samples each time went with the express wagon. Mr. Febles is in charge of the A. C. M. Company's Assay Office at the High Ore Mine. Before Mr. Dwelle's coming there we had furnished quite a tonnage, that is I cannot say how many tons, but for sometime we

had furnished the Montana Zinc Company these zinciferous ores. This company leased the old Pan-Amalgamation Mill and turned it into a concentrator and static separation plant for the treating of the zinc ores. Their daily tonnage was not very great, it was the time they were working on the Alice ores,—in the experimenting stage. They operated, it seems to me, during the years 1904, '05 and '06, but they gave up the Alice ore and got a better grade of ores elsewhere. After that they got their ores from the Lexington, which are of a better grade and coarser zinciferous ore. Most of the ore from the Alice and especially that from the north ledge is very fine grain. The Alice Company extracted those ores and delivered them to the Montana Zinc Company. They delivered a few thousand tons. It was possible to see the zinc ore bodies before this Montana Zinc Company was furnished with ore, and some little cross-cutting had been done and a few carloads had been extracted and shipped to Utah and Colorado. In mining for this zinc in 1904, '05 and '06, ore bodies were disclosed to a greater extent. In the early days they uncovered the zinc ores in many places and left them there because the zinc impaired their milling operations. In the old mining the zinc ores were left there without development. Prior to the obtaining of the Alice ores for the Montana Zinc Company, it was not possible to make any such general and thorough sampling of the Alice zinc ores, as was made by Mr. Dwelle in 1910, because he had the advantages of the larger surfaces

exposed. After the Empire Zinc Company was furnished this ore, we made a shipment of between 900 and 1000 pounds to Beer-Sondheimer Company, of New York. They sent an engineer there, and we furnished him a man, and he took this ore from different points to get a fair sample on the four, five and six hundred levels. I shipped the ore myself by express. We retained a sack of the samples of that shipment taken from each level, because we thought other experimenters would want to try it. Those sacks were regular ore sacks, containing something over 100 pounds each. We kept those sacks in the little store house we had there at the time. We have some of it there today. We took a part of it to Mr. Feble's on a Monday morning, I think it was the fifteenth of June; we took a portion of each of these sacks and kept them separate. I myself delivered the ore to Mr. Febles. Those three samples are representative of the zinc ores on those three levels.

Cross Examination.

The man I sent into the mine with the engineer representing Beer-Sondheimer & Company, was Mr. Spitzger, he was an engineer in their employ. I sent another man by the name of McIntyre, he was a mining engineer,—had attended the Montana School of Mines. I think it took them a couple of days to do this sampling, if I remember rightly. I was down in the mine with them but not all the time. I went down and stayed a while, and then went up again and went at my other

duties, and then went back again. Mr. McIntyre knocked down lots of the rock and Spitzger took whatever he wanted. Whether they took the samples from the places I would have taken them or not, I am not able to say. I believe that they did not have to work very hard, because there was a good deal of this ore that was left by the men who took out the shipment for Mr. Dwelle just a short time before that. That is, Dwelle had taken down some considerable of the face, and took out whatever he wanted and then Mr. Spitzger and Mr. McIntyre took what they wanted; that is what they did. I am not a technical graduate mining engineer myself, I never studied at any professional school. I have covered a good many subjects at different times,—done more or less fire assaying; I used to read technical books frequently on different branches of mining and related sciences. I was kind of a clerk to my father attending to affairs in his office mostly, during his lifetime. The character of my work since that time has been making settlements with lessors and keeping the accounts and looked after the operations whatever we had to attend to.

Mr. Feble's office is at the High Ore Mine. He is assayer or chemist for the Anaconda Copper Mining Company. Mr. Febles sampled the work that Mr. Dwelle did there, and he has done sampling for silver and so on for the Alice department for a good many years off and on. Examinations made by Mr. Dwelle was made in the month of March, 1910. The samples were sent to Mr.

Febles' office and there crushed down for assaying and Mr. Febles knows whether duplicates were saved or not. The samples were quite bulky so there was plenty of rock to save, if they wanted to do so. Besides the carload he shipped to be experimented with, Dwelle took out 74 samples containing several pounds each. At that time these samples were all sent to the assay office of the Anaconda Copper Mining Company, and I know they were assayed for I have seen the returns. Of course, I was not present when the assaying was done. I did some assaying in 1902 and '03, just the Alice ores, silver and gold. The assayer at the Lexington and the Montana zinc Company told me that they got better results from the assays of the Lexington ores. I never assayed any Lexington ore myself. What I say of the value of the Lexington ores is hearsay, but I know the character of them by examining them. They are coarser and look easier to treat. I am satisfied that the Lexington ores are of a coarser nature and a little different character than the Alice. I am familiar with the stages of reducing zinc ores, but not an expert. I have seen the static separation of zinc ores in operation. I have seen the Wetheral Separator in operation. When I spoke about the Alice ores being generally fine grain, I mean that if you break a piece of zinc blende from the Alice, it looks like a piece of cast iron, the particles of the zinc, and lead, and iron, are so fine, and apparently so close together, that you have to grind it very evenly to separate them

in any way. Clarence B. Wisner was the man who came west for the Montana Zinc Company, and who represented the New York capitalists. Dr. Morris Eisenberg had more or less to do with the Montana Zinc Company at that time, I understand he promoted it. To my knowledge it was never looked upon seriously in Butte. Mr. Wisner personally had had no experience in the reduction of zinc ores, before he came to Butte. I knew Dr. Eisenberg by sight for a good many years; he was a Jewish Rabbi, and afterwards a kind of a promoter. I could not say whether he had any familiarity with the subject of the reduction of zinc ores. Apparently when silver mining was conducted in the Alice, zinc ores were left where they were encountered because they were not reduced in the silver mill. I could not state how wide the lode is there, including the series of veins, the zone itself I do not know. We have a north vein and what is generally called the south vein, and there is a vein called the Hawkeye vein, which seems to run off easterly from the Rainbow lode. I cannot state whether it was supposed to be a part of the main Rainbow or not. I could not state how much space there is intervening between the north and south vein, the width is varying. There is a good deal of granite intervening. I could not state the total width of the veins. It is considered to be pretty wide, the zinc ore bodies vary in width, from a foot and a half to thirty feet, but as far as the other mineralization is concerned, I have never measured it up. There may

have been besides the zinc ore a few lenses of silver left there, lessors have prospected and found them since. There may have been some copper ores left there, containing a very small fraction of one percent of copper in the gob. There never were any ores left there simply because they contained copper that I know of. All the ore in the Alice contained a very small percentage of copper; about one-tenth to perhaps four-tenths of one per cent. It was not considered of any aid in the Pan-Amalgamation process, but was considered a detriment. I never attempted to make any figures at all myself upon the tonnage on ore in the Alice mine.

Re-Direct Examination.

I was down in the mine at different times and saw Mr. McIntyre and Mr. Spitzberg take the samples of which I kept three sacks. I think I would have taken those samples from the same places. It was characteristic ore that was left there in extracting this material for Mr. Dwelle; a copy of what purported to be the analyses of the Dwelle samples was given me and kept on file, and have been amongst the files in the Alice Office since that time. I think they employed upwards of forty men in the Montana Zinc Company plant. Mr. Wisner had his Superintendent named Humphrey and a foreman named Lyman conducting the plant. I believe they claimed to have had former experience in

that line of work. They were milling men and that was their profession.

Re-Cross Examination.

Mr. Dwelle and I worked on these samples and figured,—the figures have been kept on file, he and I worked for the return which he got. I took those samples down to Mr. Febles' office, and if they were assayed at all it was in his office. The assay certificates were given to Mr. Dwelle direct. Duplicates of the original certificates were placed among the files in my office. These duplicates were figures which Mr. Dwelle and I made from Mr. Febles' returns,—that is the returns were given to Mr. Dwelle and he and I made some figures on those returns and those figures were preserved. I did not make a report to any of the stockholders of the results of the Dwelle sampling, and it was before I acquainted Mr. Gillie with what was going on. I do not remember of having apprised anybody else of the results of that investigation whatever. The samples taken by Dwelle were from the six, five and four hundred foot levels, he took some samples on what was called the south vein. He took them in groups from the above levels and from the north vein and the south vein, taking the greater number out of the north vein. I cannot tell you from memory how many of the 74 samples came out of the north vein, but Mr. Dwelles' notes were placed on the map and I made a typewritten list which would show. He and I worked from his notes. Each sample was numbered and the number was

recorded on a map which Mr. Dwelle and I traced, he did most of the work but he and I worked together on it. We traced out a map and it showed where each and every sample was taken. In sacking samples we always give them a number of which we keep a record, which shows where this sample was taken, and Mr. Dwelle did the same thing. It is the usual method of numbering your samples when you send them to an assayer, if you have more than one you number them and you have to rely on your notes. We put down on a map the places from which the various samples came. As every sample was taken, and I saw Mr. Dwelle and helped him take some of them, we made notes where they came from, numbering them as we took them. Mr. Dwelle made the notes and that was the information that enabled me to designate on the map the place from which they came. We sampled a place in the 600 on the north vein about 20 feet wide, on the 600 there is a drift running west, but not very far. As far as we could get in this drift was alongside of any zinc ore that might be there, the chamber that was sampled, however, was a sill floor where zinc ore had been extracted by the Montana Zinc Company, and we sampled across what is known as the back of the level. I do not remember the length of this drift. It was the drift that went west from the crosscut in the north vein. This drift extended from the further end of this chamber that had been made in the extracting of zinc ores, and we could not get very far in it because

it had caved. It may be two or three hundred feet long. You could not get in there very far, because it was caved, and the only way you can tell is to look at the map. The mine maps will tell exactly the length of the drift on the 600 as far as the surveys are extended, and the surveys are being extended while the work is done. I have those mine maps in my possession. I would have to consult the map to see how far east it was extended. It has been many years since that work was done. The drifts on most of those upper levels run pretty nearly the length of the claim with a few exceptions, the length of the claim being 1100 feet. I do not believe the drift on the 500 extends from end to end of the claim, giving the distance would only be guess work on my part. In the case of the 500 level, we got our samples on the north vein, east of the crosscut and for a distance of probably 200 feet or more. The drift on the 500 going east is a lateral drift and it runs partly on one side of the zinc ore body, and then it crosscuts south and runs on the other side, so that we got the samples here across the ore body, and took them from both walls. There are two crosscuts there which we could take clear across. They run alongside the zinc ore body probably 200 feet. There was one stope on the 500 from which we took samples that ran up 35 or 40 feet. As regards the south vein on the 500, we could not get access over a great extent because that is more caved than the north vein. We took out several samples, however. On the 400

we could cover more ground because that was opened up much better. Near the crosscut we covered it at short intervals, for 150 or 200 feet, and west of the crosscut the vein was open quite near to the Moulten end line, within 100 feet; or may be a little over 100 feet that we did not get in there. We found a zinc body in west several hundred feet from the cross cut; in other words we took in two different places there. Between those two points, there was very little zinc exposed, or that could be seen from the old workings. The zinc was probably in back of the side of the level, or the rock which had not been mined out. This was in the drift and the zinc ore body did not show except in one or two places where there was a cross-cut until we got out to this point that came along-side of the drift. Generally that was the way we did the whole sampling. I never went into a mine for the purpose of making a thorough sampling of the mine, nor to determine generally the character of the ore, but I have seen it done. I saw that done in the Jesse on the 1600. I just saw the work being done. I saw them working at that. I was there but had no connection with those who were doing it. I was helping a survey for the Anaconda Copper Mining Company and while I was surveying this sampling was going on. I was just carrying the tape. In taking our samples in the Alice on the 400 level we did not get as far east as we went west. As I stated before there was one bunch of this zinc ore at the side of the 400 level, several hundred feet west of the

crosscut, which while it may have been a part of the continuous body, was not shown up except in the places, between the points where we took it and the crosscut. I do not know just how many feet it was. It was quite a ways over toward the west end line of the Alice that went in with these samples. I should estimate the length between six and seven hundred feet. We did not take any samples on the 300 itself, but east of the crosscut we went up a raise and there was a blind sill or a floor, below the 300 level showing zinc ore and we took samples out of it. There was quite a gob up there, it had been worked out a little. There has been more work done than is shown by the report of 1886, which discloses the following: 1750 feet of drifting on the 400; 1340 on the 500; 1840 on the 600, making about 4000 feet of drifts altogether on those three levels.

Re-Direct Examination.

There were good many portions of the levels that I did not get into with Mr. Dwelle. The levels where they worked the silver ore had not been cleaned out. There were a good many places we could get through but we had no object to clean them out as we had in going through to the zinc ore bodies, the larger zinc ore bodies. I do not think there is any question about our getting a fair sample. The bodies shown with few exceptions are very uniform. A lateral drift is a drift which runs parrallel to a ledge generally it is a drift run in the country rock. Mr. Dwelle not only marked on the map from what point the

samples were taken, but he extended his sketches and compass surveys on this tracing from which the blue print, which you have there was taken, showing the condition of the levels, that is to say, the extent of the levels at the time that he took these samples. You have in your hand the blue print made from that tracing. That blue print has been locked in the file of the Alice Office with the other records and papers from that time until it was brought to Helena for this trial.

By MR. EVANS: We ask to introduce this in evidence.

Re-Cross Examination.

Mr. Dwelle has the original tracing sheet but the working map from which he made it we have at the Alice office. He traced the workings for the purpose of taking these blue prints, and from the tracing that he made, this blue print was printed.

MR. WALSH: I object to this, if the Court please, for several reasons, in the first place the original seems to be in the possession of the witness from which the copy was made, and this appears to be a copy of that copy, and we have no evidence at all that the samples were taken from the places indicated on the map.

Re-Direct Examination.

I spoke about the original being an Alice map, that Mr. Dwelle made his tracing from. That map showed the workings of the Alice mine prior to that time, that is the surveys. It was a plan map. There was not indicated on that map the point where Mr. Dwelle took his samples, but he

made a tracing from that map, which gave him a tracing showing the Alice mine workings, and then he put up on the tracing the point where he took his sample and the results of his samples, and from that he made this print.

Re-Cross Examination.

Mr. Dwelle and myself made this blue print as far as I can remember.

MR. WALSH: I object to it on the ground that there is no evidence; Your Honor has no assurance as to the places they were taken.

THE COURT: To some intent it may be competent, it is doubtful; if of no value as evidence the court will reject it in making its findings. Objection overruled.

(Map marked Defendants' Exhibit 2.)

Re-Direct Examination.

To make it clear Mr. Dwelle and I invariably went down together in the morning, and I stayed with him a while until I had to go up and attend to other duties, and then I came down again; I cannot remember how many times a day it was, but I knew what was going on all the time and where he was working. I would see him at these various places and in fact some of them I helped him.

(Witness excused.)

[Testimony of John C. Febles, for Defendants.]

JOHN C. FEBLES, a witness called in behalf of the defendants, being first duly sworn, testified in substance as follows:

My name is John C. Febles; I live in Butte, Montana; I am chief assayer and chemist for the Anaconda Copper Mining Company, and in charge of that department for the Anaconda Company. I am a graduate of the Colorado School of Mines. I had five years' experience with the American Smelting & Refining Company, before coming to Montana, and have been ten years in the employ of the Anaconda Copper Mining Company in that capacity. I have been engaged in analyzing and assaying copper ores of Butte and other ores that occur in Butte and Montana generally; there is a laboratory in Butte there that I am in charge of. Mr. Howard Buzzo who has just been on the stand, delivered three samples of ore to me about the 16th of June, this year; they were numbered 4, 5 and 6., Those three were the only samples that Mr. Buzzo brought me on that day. I examined the samples as to the character of the ore they contained, and then I crushed the samples at the suggestion of Mr. Bruce of the Butte and Superior and after having crushed the samples, I cut out the proper amount for assay and analysis, and turned the balance of the samples over to Mr. Bruce. Mr. Bruce came to my office and examined the samples before I did anything with them. The samples were crushed in an ordinary rock crusher, and was transferred to a coarse grinder and ground so as to pass through a twenty mesh sieve, then carefully rolled, and the sample for assay was cut out with a cutting box, such as we call a riffle, the reject of that riffle was returned

to the original container and properly marked and returned to Mr. Bruce. That is the most accepted method in modern practice to get a fair sample of ore. I made a composite sample of portions of the three for assays. I then weighed equal amounts of the well mixed pulp and combined the three portions in equal amounts, and then carefully rolled that so as to make a uniform mixture out of it. Each was analyzed for the same metal values. I have a memorandum in my pocket which contains those results I cannot give it from memory. I made this memorandum from the results as I got them from the assays. Sample marked No. 4, the results were iron 11 per cent, manganese 1.12, copper trace, silver 3.9 ounces, gold .04 of an ounce, lead 5.7 zinc 14.1, insoluble 46.36 per cent. Ordinarily the insoluble would be called silica. The insoluble residue from a sample is usually taken as the silicate content of that ore. The chemical formula for that is SiO_2 . No. 5, iron 8.6 per cent, manganese .84 of one per cent, copper trace, silver 2.3 ounces per ton, gold .02 of an ounce per ton, lead 7.58 per cent, zinc 13.5 per cent, insoluble residue 51.6 per cent. No. 6, is 11.3 iron, .96 of one per cent manganese, trace of copper, 3.5 ounces of silver per ton, .02 of an ounce of gold per ton, 7.8 per cent lead, 14.3 per cent zinc, and 44.18 per cent silica. On the composite sample the results are 10.6 per cent iron, manganese .98 of one per cent copper trace, silver 3.25 ounces per ton, gold .03 of an ounce per ton, lead 7.5 per cent, zinc 14 per cent, silica

47.22 per cent. Mr. Bruce whom I referred to returned the results of his concentration test to me, and I analyzed them, giving Mr. Bruce the results of the analysis; so that Mr. Bruce as a result of my analysis had what these products contained before him. My observation of these samples before analyzing was that they were what we would call a zinc lead ore and quite silicious and the mineral contents were intimately mixed. I mean that it would require very fine grinding or separation to separate and lessen the zinc and lead particles from each other and from the silica content in the ore.

In March, 1910, in my laboratory, I analyzed some samples for Mr. J. E. Dwelle of the Empire Zinc Company. I analyzed 74 samples. I have the results of those samples with the numbers of the samples designated on them, as given me by Mr. Dwelle. If I recollect clearly, those samples were delivered to me by Mr. Alex McIntyre, who was assisting Mr. Dwelle, at the time he made this examination of the Alice property. I think they were brought over in a light wagon. I have in writing a list of the results of these samples.

MR. EVANS: They are all there, so I will offer this list.

Cross Examination.

I do not know anything about these samples, except that I was told by Mr. Dwelle that he would be sending those samples to me by Mr. McIntyre, that is all I know about where they came from.

MR. WALSH: I object to the introduction of

this, if the Court please, on the ground that it is incompetent.

THE COURT: I will allow them in at this time; if not competent the court will reject it. Objection overruled, and exception noted if desired.

MR. EVANS: I will ask to have this marked.

(Marked Defendants' Exhibit 3.)

I have made a general arithmetical average of the 74 samples, which is as follows: Copper .081 of one per cent, silver 4.105 ounces per ton, gold .03827 ounces per ton, zinc 10.64 per cent, lead 5.847 of one per cent and silica 49.91 of one per cent.

THE COURT: Of course, not much could be drawn from that, while this is an average of your 74 samples, there is nothing there to indicate that the ore was there in that average.

(Whereupon said defendants' exhibit 3 was received in evidence, and is in the words and figures following, to-wit:)

Alice Samples Made for J. E. Dwelle,—In Mch. 1910.

Anaconda Copper Mining Company.

General Assay Office

Certificate of Assay.

Butte, Montana, June 16, 1914.

Mr. J. E. Dwelle.

Date: 3/19/10.

Lot	No.	Per Cent Ozs. Sil.		Ozs. Gold		% Zn.	% Pb.	Wet. \$02.	% Insol.
		Copper	Per Ton	Per Ton					
1		no	4.00			0.90	Tr	73.20	
2		0.10	6.56			8.30	3.60	59.00	

Anaconda Copper Mining Co. et al. 907

3	Tr	2.00		9.20	4.20	58.20
4	Tr	6.00		14.30	8.10	43.00
5	0.10	13.92	0.16	11.00	7.00	41.20
6	0.30	13.92	0.20	17.20	7.20	41.20
7	0.10	7.60		10.20	6.00	52.20
8	no	4.00		6.20	2.20	61.80
9	0.15	4.00		9.60	6.10	55.20
10	0.30	6.80		14.60	9.40	41.40
11	0.20	3.20		15.50	8.10	43.60
12	0.10	2.40		8.60	5.40	49.20
13	no	2.16		3.40	0.80	56.60
14	Tr	4.40		6.80	2.80	58.00
15	no	2.00		5.30	1.00	54.60
16	0.15	4.00		7.60	4.40	44.80
17	0.10	5.44		8.80	3.80	57.60
18	Tr	2.20		4.90	2.20	63.00
19	no	2.60		3.40	0.80	71.00
20	0.30	4.80		9.80	4.30	48.60
21	0.25	4.72		14.40	11.90	40.40
22	0.35	12.00	0.20	18.20	13.20	25.80
23	0.20	8.60		13.10	11.00	37.00
24	0.20	15.28	0.22	10.00	7.90	44.60
25	no	3.20		5.50	3.60	43.20
Date: 3/22/10.						
26	Tr	3.90		6.50	3.20	57.20
27	Tr	3.00		5.30	1.00	68.20
28	Tr	3.00		16.30	10.00	40.90
29	Tr	3.20		12.00	7.60	50.00
30	0.10	5.00		13.10	9.40	40.20
31	Tr	3.40		10.20	4.70	42.10
32	no	3.40		7.80	4.40	56.00
33	Tr	3.50		8.10	14.90	41.20
34	0.10	6.00		20.30	8.00	43.50

35	0.50	7.84		20.90	10.20	29.40
36	Tr	3.54		26.90	10.80	26.30
37	no	7.60		21.00	8.10	41.70
38	0.20	8.40		18.90	10.30	45.60
39	no	3.52		16.00	9.20	37.80
40	Tr	4.40		14.00	9.00	38.20
41	no	2.20		3.80	0.90	53.20
42	no	4.00		7.50	3.80	46.40
43	no	3.20		5.90	0.70	52.20
44	no	0.60		3.70	1.00	70.40
45	Tr	4.60		5.60	1.10	59.10
46	no	0.80		0.80	Tr	83.60
47	0.10	3.36		8.00	1.30	52.60
48	0.20	11.04	0.08	10.30	12.60	31.70
49	0.05	5.36		9.40	18.40	38.70
50	Tr	3.80		13.10	5.10	55.90
501	Tr	2.48		15.00	6.70	47.00
502	0.10	3.80		13.40	8.40	40.40
503	0.05	3.28		15.00	9.00	39.40
504	0.10	3.84		12.30	7.40	48.80
505	0.05	3.12		6.20	1.50	72.80
506	0.10	1.12		9.10	2.70	51.60
507	0.05	1.12		7.50	3.80	56.20
508	0.15	1.68		9.00	5.60	45.40
509	Tr	1.68		10.50	3.40	58.00
510	Tr	0.92		14.60	5.20	45.40
511	Tr	0.92		2.00	Trace	65.40
512	0.10	8.80		15.80	12.20	37.70
513	no	0.88		3.00	6.60	65.80
514	Tr	6.60		8.90	4.60	54.20
515	0.15	1.24		18.20	10.20	35.00
516	0.15	2.84		13.30	7.00	44.40
517	0.20	4.56		8.30	3.80	50.90

Anaconda Copper Mining Co. et al. 909

601	0.15	2.28	16.10	8.80	35.40
602	0.10	1.88	16.10	9.20	49.20
603	0.15	2.20	12.90	7.40	50.40
604	Tr	4.60	8.80	2.00	66.50
605	0.25	4.60	16.80	8.20	36.40
606	Tr	1.80	7.60	4.80	62.60
607	no	3.00	7.00	3.50	68.00

Average of 74 samples:

0.081 4.105 0.03827 10.64 5.847 49.91

J. C. FEBLES, Assayer.

(Witness excused.)

[Testimony of Reno H. Sales, for Defendants.]

RENO H. SALES, a witness called on behalf of the defendants, being first duly sworn, testified in substance as follows:

Direct Examination:

My name in full is Reno H. Sales. I reside at Butte, Montana. I am a mining engineer and geologist, employed by the Anaconda Copper Mining Company. I was first educated at the State College at Bozeman and afterwards went to Columbia University in '98, and graduated there in 1900, with mining engineering degree; in 1900, Summer of 1900, I went to Butte, and entered the employ of the Boston and Montana Company as engineer, and about November 1901, I went into the geological department under Mr. Winchell, and I continued as assistant geologist under Winchell until June first, 1901, at which time Mr. Winchell left the employ of the Anaconda Company, and from that time until the present I have been

the geologist for the Anaconda Company. Most of my time I have devoted to that, although I have spent considerable time making examinations on property in the State of Montana, Idaho, well, most of the northwestern states. In my experience in the Butte district I have become familiar with the geological and vein conditions in the Butte camp and district. I have examined nearly every property in Butte in considerable detail. I am acquainted only in a general way with the surface conditions of the Alice property. I was only in the property once; I think it was on the five and six hundred foot levels, but I am acquainted with the properties adjoining the Alice on the east and south and southeast. I am acquainted with the Poser, Elm Orlu and Black Rock properties and the other properties lying to the east and south of those. Well, I am acquainted with the vein in the Rainbow Lode. The Black Rock vein, the one that is being operated by the Butte and Superior Company and the Poser Company, is generally presumed to be the eastern continuation of the Rainbow lode. By the Poser Company I mean the Elm Orlu Mining Company. I am quite well acquainted with the different systems of veins in the Butte camp, the old east and west aplite veins and the northwest and southeast series, and the northern Rainbow we have just spoken of. Taking the Rainbow lode, from the presence of copper in that vein such as shown and the general geological characteristics of the lode or veins, I should consider it a possibility but a

very remote probability of there being commercial copper ore in the Rainbow lode. I do not know of any thing geological, or anything any other way that would indicate the probability of its containing copper at depth. I think the general tendency of the developments in that section up there is rather towards the opposite. I should be surprised to have commercial copper developed in any quantity. I do not know of any ore bodies of any commercial magnitude or commercial extent in value in the Poser claim. The Poser was worked through what they call the Poser shaft. I think that shaft is about 500 feet deep, and my knowledge is hearsay, however, that they did mine some copper ore in the upper levels, but the shaft was never sunk any deeper, and the only developments in the Poser outside of these shallow developments have been made from the Elm Orlu shaft. The Elm Orlu shaft, which is now about 1700 feet deep, has worked out westerly into the Poser claim on the 500 foot level, on the 1000 and on the 1500; the 500, I believe, connects with some of these older workings in the Poser shaft by raise, although I am not certain of that; that is my general impression. Those are the only workings I know of beneath the Poser claim, and westerly from the Elm Orlu shaft these workings were made in part on the Elm Orlu vein; that is the recognized zinc producing vein in that section; they drifted westerly on this vein on the 500, also on the 1000, and started westerly on the various other levels, I think the 13, and pos-

sibly the 9. I am not sure of the other level, but they did not go very far, the ore became poor. I have not seen the copper vein or ore bodies that have been mined in the Elm Orlu. I have been down in those workings, and I have seen evidence of mining there, and I know about where they got their copper ore, but the ore bodies were rather small, and the only places I recall now are stopes there that were said to be copper stopes, but I don't believe I ever had a good look at a copper vein up there, although I did see some copper once. I should consider they were of minor importance; of course, they are worth stoping. I don't know of any zinc veins in Butte that have improved, especially with depth. I don't believe there is any merit in depth. There might be possibly for some little distance below the surface. The upper levels are usually leached out of zinc the first few hundred feet or so, and the developments so far show that below two or three hundred feet the zinc ores begin, and I don't know that there has been any improvement in zinc in depth, but at times the ore body may get larger or smaller. Zinc ore bodies are being mined in the Black Rock at least above the 700 foot level, although they get pretty good looking ore even as high as the 400. I should say they have mined these zinc ores in the Black Rock at least 50 feet in places, possibly more. If copper ore is found in the Alice claim in bodies of importance, it would be very much of a guess in what veins it probably would be found in. Of course, the Blue vein system has

proved to be copper bearing toward the northwest, but I don't know as there is any more chance of finding it in the Blue vein than any other, so far as you can tell by the development. By the Blue vein I mean the northwest and southeast series. Well, I think possibly the vein we call the Emily is the most northerly of the Blue vein pointing toward the Alice ground. That is the first one that has been referred to here in the evidence. It dips to the north. That has been developed northwesterly, with reference to the Emily claim or the Pilot claim, by Badger workings to about the west end line of the Pilot claim and has also been intersected by the workings from the Elm Orlu. There are some places on the Emily claim beneath the surface of the Emily. There are stopes beneath the surface of the Emily. Going westerly on that vein, it has been drifted on westerly for 300 or 400 feet beyond the stopes on the 13 and two hundred or three hundred feet on the 16, and likewise two hundred feet or more on the 1800 foot level, beyond the limits of the stopes. As to the veins on these workings westerly, the vein continues, but it has no ore. I think possibly it continues just as strong as it is down to the east. From the place where you find the stopes in the Emily, comparing it to that place, it gets smaller. In the Elm Orlu it is split up into two veins. Beneath the surface of the Emily or Pilot claim, the vein going west is always narrower of course where it hasn't any ore. It gets narrower, but it is a strong vein. Where the ore is there is

a width of five to twenty-five feet to the vein. On the 1300 it is about four feet, and on the 1600 eight or ten feet, and on the 1800 perhaps a little smaller, eight feet. In the Elm Orlu that condition is beneath the surface of the Emily or Pilot or both. Well, on the 1500 of the Elm Orlu they have a crosscut running diagonally to the southwest, and it naturally cuts part of the northwest veins which come up through that country. There is no direct connection between the Elm Orlu workings and the Badger workings. It is a matter of correlating from the Badger to the Elm Orlu. The Elm Orlu workings show a vein in what I believe to be two branches. They are small and don't carry any values. Where the ore is in the Emily and Badger they don't look promising. That is the most westerly point that I know of. The next northwest and southeast vein of any importance going southerly is the Jesse vein. The Jesse vein is known down easterly to some distance east of the Ballaklava shaft. That is down in the Mountain Chief Claim, and from that point it has been developed more or less up northwesterly through the Badger mine. The Jesse is what we call a strong fault vein in which the ore occurs in bodies or shoots. Toward the east in the Jesse and in the Mountain Chief claims, some of these ore shoots were worked up to the surface, and in fact some of the ore in the Mountain Chief came up to cross shoots; there is good ore right there at the surface tunnel, and we have mined in the Mountain Chief and Right Bower. We have

mined this ore body more or less continuously down to the lower levels and the same is practically true of the Jesse, where they mined to a considerable distance above the 400, I should say, perhaps, 300 feet from the surface and they have mined it from there down to the 22, I believe. Those are the only ore shoots that have been developed of any importance in the Jesse. Between the Mountain Chief and the Jesse claim there is the Tuolumne people who have also mined the shoot, but that is a slanting shoot. That dips more or less from one party's ground to another, and more northwesterly from the North Butte workings. It has been developed by the 1200 foot level of the North Butte or Speculator mine, and for some distance up to the northwest by the Badger workings northwesterly, and it has also been intersected by a good many crosscuts, and by some drifting in the Badger mine but there has been no ore developed at all west of the North Butte workings. As to the North Butte workings, I cannot fix a point exactly how far they extend westerly. Guessing roughly, I should say at least 200 feet west of the Gem end line on their crosscut. The most westerly point in the Jesse vein where ore has been found is in the vicinity of the Gem west end line. That is where the Big North Butte stopes ended. Nothing has been found west of that. The North Butte workings disclose that on this Jesse vein, their highest grade ore came from practically the 1000 down to the 16 and below, well, 16 and 18; below the 18 they have

drifted on the 2000 to the 2200, and the ore shoot is much shorter and of lower grade, and on the 24 to the 26 and 28 they have not done any work on the Jesse. It never appeared to be worth while working on. The 2800 foot level is the deepest North Butte working on the vein. It did not show any ore, and they have not drifted upon it. West of the west end line of the Gem, the developments on the Jesse vein are not nearly as promising. It has been very disappointing. I refer particularly to the work from the Badger shaft. The Corry exhibit number one going to the westerly there through the Badger State does not show the position I have always given the Jesse. It is considerably to the south. The position there as shown by Mr. Corry is considerably to the south of the position of the vein as I found it on the ground. If it continues in its course, it would enter the Valdemere claim at some point south of the letter "r" in the word Reef Fraction—the east end of the Valdemere—in the northeast corner, possibly seventy-five or a hundred feet south of the northeast corner. The next vein of importance that I know there, the northwest and southeast vein is known as the Edith May. The Edith May vein has shown a large ore shoot in the North Butte workings and extended westerly to the vicinity of the west end line of the Miners Union Claim; southeasterly the Edith May has been somewhat of a disappointment. We had an ore shoot near the Modoc shaft, and it was not very long, and it was rather a flat ore shoot. It never amounted to

much, although we did take a good deal of ore out of it. Going northwesterly, the Edith May has been developed in the Badger mine on the 1300, 1600 and 1800 foot levels. There is a body of ore there which has been worked on these levels, although the actual ore shoot as we call it becomes rather poor going west. In fact, while the North Butte Company worked their ore shoots from one end to the other the Badger State has not been able to do so. There is a part of what we call the ore shoot that is of very low grade and has not been mined. It is not of commercial grade. There has also been intersected by workings from the Badger on the 13, 16 and 18 in a westerly direction, where drifts had been extended out there toward the position of the Moose shaft, and westerly from the Badger shaft. It does not show any ore in any of those workings. The most westerly place that developments have shown ore on the Edith May is in the vicinity of the Badger shaft,—slightly south of west in the Badger shaft—rather west of south, I mean of the Badger shaft. The best ore of the North Butte Company in mining the Edith May vein on the dip of the vein was like that in the case of the Jesse. It was the best from the upper levels, perhaps from the 100 to the 1800, though they mined below that, but it has not been of as good a grade. In fact it was of doubtful grade on their 2200. They have done some work on it down there below those levels and mined some ore on it, but it is not as good as it was above. I don't know exactly how much of

that ore has come from the Edith May, but there is ore there. As to the condition of the Edith May vein in its developments from the Badger State shaft, and particularly westerly from the section of the Badger State shaft as to giving favorable promise of occurrences to the west, the unfavorable condition is that the ore shoots themselves are beginning to fail in copper. While you find the ore shoots there, the ore is the same as in the other veins. Instead of being a copper ore, it is going to be an ore made up of zinc, quartz and iron. The copper is failing going to the west. I mean the mineralization. No, they are not commercial. I don't know just what would be the best term. You could call it a mineral shoot or a shoot of mineral deposited in the vein. I have made a general observation on all of these veins, that as you go outward from the main copper area you get into veins which are more zincy; that is, there is a transition from one end to the other. Starting in the Alice country, both the northwest veins or the blue vein system and the old Anaconda copper systems consist of the silver vein minerals, manganese, quartz and iron. That is practically all, and then when you get into that district it does not make any difference whether you are mining a northwest vein or east and west, the mineralogical character is very similar. The east and west veins are distinct copper bearing and you find the northwest and southeast the same. Going down in the copper producing area, you get the same conditions, relating to the cop-

per district, the veins have similar mineralogical conditions. There have been a number of veins developed in the Corra mine pointing towards the Alice ground. In fact, several of the northwest veins come together in that section, and considerable development has been done on these Corra veins out to the west, particularly on the 1000 foot level and 1400 foot level; that was done by the Corra-Rock Island people, I believe, and these developments to the west showed no ore. I think the 1400 ran out possibly seven or eight hundred feet west of the known ore bodies, and the 1000 also ran out a considerable distance, possibly 500 feet, although I am not sure of the amount, but it showed no ore. The nearest point to the Alice ground where any ore was developed would be the Edith May, made in the Badger claim. The nearest one south of that would be the vein in the Corra section, which would be possibly 2000 feet from the Alice ground. These northwest southeast veins, are faulted at times. In mining through the Badger State shaft most of the ore was obtained from the Badger vein, and that is the vein referred to shown as Badger vein upon the map called Weed 1. That vein we contend belongs to the Anaconda or the old vein system, because it is intersected and faulted by the blue veins. These northwest and southeast veins intersect and fault that vein where they are encountered. That vein has been developed to the west on the 1300, 1600 and 1800. They all show the vein continuing, but the ore values play out.

The developments in that vein as you go toward the Alice ground are not promising. In fact, they are very disappointing. It was the first vein different from the blue system that we find the copper ore in, and it was certainly disappointing to find it playing out. The Badger vein dips to the north in the upper levels, and changes and dips to the south in the lower levels. As to whether if that vein continued on its strike westerly from the last point, it would go into the Magna Charta or Magnolia,—there are some of the claims here, the Curry or Midnight, Alice, Millsite; It has a curved strike. It strikes northwesterly going easterly from the Badger claim and nearly east and west around the Badger shaft and turned around to a southwesterly strike going to the southwest. I do not think there is any other vein that I know of in the country there of any importance that would have any substantial bearing on the value of the Alice ground. I think I have described all that might have any bearing on the Alice ground. I do not know of any vein that points on its strike to the Alice ground from the east or southeast or the general easterly direction or that side that gives promise or looks favorable to the finding of ores beneath the Alice surface. I do not know of anything coming in from the other side, the Silver claim side, that would have any particular bearing on the Alice. They are simply veins which are regarded as silver veins, the same as all that country up there. I don't know anything of any particular importance.

Outside of the low grade zinc ores that have been referred to repeatedly I know of nothing in the Alice ground or any of it that would give it any tangible value, that you could give it as a mining engineer, except a remote probability or possibility of copper. It really hasn't any great importance. I could not as an engineer place a value on it. It is purely speculative; very much so. No, I am not familiar with metallurgy enough so as to have an idea of the value of the zinc ores in the Alice. In my history of that section of the country, or taken in its entirety, there is nothing that I can suggest that existed in 1910 prior to the first day of June, that would make that an unfavorable time to sell the Alice property. Mr. Weed referred yesterday to having been limited in the extent of ground he was permitted to visit in the Badger State. It came about in this way. We were making some arrangement for mutual inspection in the Badger State and Elm Orlu mines, and the understanding was on our first talk that we should have full access to the Elm Orlu mine, but it was questionable of course, just how much ground the Clark people would care to cover in inspecting our ground. My conversation was with Mr. Joseph Pyle, who was representing the Clark interests. He is Senator Clark's chief engineer, I believe, and he came to my office, I believe, with Mr. Gillie. I am not sure, and we took out our maps and showed him all of the workings in that section; that included everything leading from the Badger State in all directions, and con-

necting with the mines to the south, and Pyle was not limited in any way whatsoever. He was asked to mark a map, or mark out his boundaries, of whatever ground he wished to see and he did so, and we made a map covering those workings and it was delivered to him. There was no limit on how much ground he could see. That has always been our policy with outside companies. This map was what the directions to the foreman were based upon. The foreman at the mines do not let outsiders through without directions from somebody as to where he can go. That particular map, exhibit number 1 Weed, was made to accompany the paper I prepared for the American Institute of Mining Engineers. This particular map was made to show the structural relations between the veins and fault fissures in the Butte district, as far as they were sufficiently known to be placed on the map. The Jesse vein branches in the Badger State, going westerly. I don't know as I could really say which is the original portion. It is divided into two or three branches, and they all look more or less alike, but none of these branches look as strong as the combined branches to the southeast.

Cross Examination:

The Badger State vein is marked here in black and printed on here "Badger vein." That corner No. 1 is a different scale. It will not fit on that map. I cannot very well place the Badger vein there. Of course, it is difficult to put a vein from this map on to the other, because there are no points

of reference. The only thing on this map is the Magna Charta and the Valdemere and the Magnolia, which have been placed on there by someone else, and I don't know if they are correct. I don't know whether or not those claims were put on there by reference to points on my own map. I can draw it on with reference to this claim on this map. (Witness complies). That particular vein has been developed I should say a thousand feet; that is very rough. I am just trying to recall a map. We crosscut it too from the Badger State shaft, and then drift easterly and westerly, not very far easterly from the shaft, most of that is towards the west. The Corry No. 1 map has the Badger State already marked there I think its a little further north from that mark, but that is substantially correct. We crosscut this Badger vein possibly three or four hundred feet on the upper levels and not so much on the lower levels. The Badger vein is developed in a crosscut on the 1000 in a drift on the 1200, and in drifts on the 13, 16, 18 and 20. Those are not all substantially a thousand feet in length; the bottom level is shorter; the others are substantially the same, that is, the 13, not the 10. When I commenced to develop that vein it must have been somewhere along 1907 or 8; somewhere along there, and have been at it ever since. I won't say that more than half of the ore taken out of the Badger State since 1907 has been taken from this Badger State vein; some of it came from the Edith May and some from the

Emily vein, but not more than half of it. None of it came from the Jesse. Mr. Gillie is my superior officer. Of course, I confer with him constantly, and the testimony disclosed that I made reports to the New York office once a week or thereabouts. I don't make reports. I don't know how it is that Mr. Gillie did not happen to say anything at all about the vein in the Badger State claim. I don't know how it came about that Mr. Ryan believes we take ore out of the Jesse in the Badger State. We are down approximately 700 feet in the Moose. We began that work possibly in the past year and a half. I am not sure just what time. We have done nothing that I know of about sinking. There has been no cross-cutting from the Moose. That work was not done on my advice. The Moose is for an air shaft. That is my understanding. I don't know of any work being done in the Moose. There is an air shaft constructed at nearly each of the mines. That is a very common thing to have an air shaft absolutely separate used for air only. We have hoists on those. There are lots of veins that could be conveniently explored from a shaft sunk there,—any one of them within easy reach of the Moose shaft. That would not be very far from the Rainbow Lode and pretty close to the Badger State, and the Edith May. Those veins have been pretty well explored already. The Edith May has been cut in these lateral workings leading up to the Moose shaft, within a few hundred feet. It has been cut in these workings leading to the Moose

shaft on the 13, 16 and 1800 foot levels. Those levels run partly on the Badger vein and partly on the country rock, leading out to the Moose shaft. These veins are cut in these workings. The workings are run as they intersect the veins, and they alternately strike and intersect these veins. The Jesse vein is open to probably within 500 feet of the Alice ground and the Edith May much closer than that. The workings pursue practically the course that I have shown the Badger State vein to take on the map, Exhibit Corry 1. I have mine maps showing the progress of the work from time to time. I haven't any authority to produce any maps, but I have a map showing just exactly where the workings in all that region are. No drifting has been done from the Moose shaft since the last work was started in the Moose shaft; not since the sinking was started. The Emily is the most northerly vein known in this section, that is, in this neighborhood, that intersects us. That has been extensively worked. It has been drifted upon by the Badger State mine to about the west end line of the Pilot claim. That is in the neighborhood of the Mill View,—corresponding to the east end line of the Mill View. There is developed on the 1500 Poser a vein which I believe to be a continuation of this vein. It dips to the north. There is a controversy between our company and the Pilot Butte about that. They contend that the apex of that vein is within their own ground. Of course, they contend that the Emily vein

is just where we say it is, except that they have a vein ^{coming} ~~coming~~ down into the Emily. It is a question of where the apex of those ore bodies is. The Emily was worked for copper and silver ore. No, I cannot give you anywhere near the exact figures that it produced. It had a good ore shoot in it. It has been mined possibly 400 feet over the strike, or less than that, possibly 250 feet. We have been working it two or three years. I know where the Amy Silversmith is located. I don't know whether it is being worked or not. I don't know anything about it. I ~~think~~ ^{think} there are some lessors working on the Goldsmith, but I don't know anything about that. The Jesse vein is worked most easterly in the Mountain Chief and Ballaklava. The vein there is worked in the Ballaklava between 2500 and 3000 feet. That would be from the vicinity of the west line of the Gem, where the North Butte ore body occurs, to where the Ballaklava people are working in the Ballaklava mine. It is just worked where it has ore. Well, about 1200 feet would cover most all of the producing part of the vein. On the 1200 foot level it is almost continuously worked from there to the Tuolumne and North Butte to the west end of the North Butte workings. In some levels it continues and some levels it does not. I am not sure from what vein the North Butte vein in recent years has been coming. I could not give you any definite information about that; it has been coming, a great deal of it, from what they call the Snow Ball vein, and

also a vein they call the Adirondack. Up to within recent years I don't believe there has been a pound of ore mined from the Jesse. The quantity was there, but the quality was not; that is, low grade ore was there. It never has improved. The Adirondack vein belongs to the Blue system, the Snow Ball is rather doubtful. Its strike is about half way between the strike of the east and west veins, and the northwest and southeast veins. The Adirondack I presume takes its name from the Adirondack claim. It is difficult to say what the difference is between the northwest southeast veins and the east and west veins, but the fact that they intersect and displace the older veins merely shows that they are of a later age. That is all. They are of later formation. Down towards the east end of these blue series of veins, the northwest southeast series of veins, you get copper in abundance in some of them. Now, these same veins are also shown in the workings of the East Butte Company and none of them are productive down there. I don't recall any other place besides the Butte camp in which ore is mined that contains two metals in conjunction, that are mined together. I have never heard of any rule with respect to the occurrence of the relative abundance of these metals, wherever they are found in depth, as to which one predominates in depth. I have never heard of any rule that has been established by any geologist or anyone who knew anything about it.

Re-Cross Examination:

This map, Weed 1, represents, of course, a horizontal plane through the Butte District. As a matter of fact, the surface is very irregular, so that any horizontal plane would not show the same depth at all points. That particular elevation, 4600, corresponds to a general average depth of about 1500, although it varies a great deal; some places it is 1100 feet, and some places nearer 1600. In the northeast country in the vicinity of the Badger, the general dip is to the north, especially in the upper portions; going southerly or southwesterly, some of them are nearly vertical and to the southwest they have an average dip to the southwest. The northwesterly extremity of the veins as they approach the Alice, most all dip to the north, but the Edith May dips to the south in the lower levels. The dip is not very marked except the Edith May dips about 75. In 1500 feet, if it continued that would make a difference, but it changes to the south in depth. My map does not depict substantially the apex of the veins. If the apex were projected to the surface, or if my lines were projected to the surface, depending on the dip of the vein, it would occupy very much the same position. When I speak of the course of the Jesse vein, I gave its position at its westerly extremity, considerably to the north of where it is depicted on the map by Mr. Corry. I referred to the surface indications. The position of the Jesse vein on the map, Corry one, is not where I should draw it—if that is intended to be the apex.

The workings in the Badger State cut the Jesse vein on the 200 foot level and the 1000, that is, within the Badger claim. I should say it is possibly 150 or 200 feet northeast of the Badger shaft where we crosscut it. The point or points in the Badger State claim where we cut the Jesse vein is shown on these various levels easterly and northeasterly from the shaft, and it is also exposed along the surface in the various shafts, cuts and trenches. As I recall it, the most westerly underground working cutting the Jesse vein, is on the 1300 level, a crosscut north, a considerable distance west from the Badger shaft. That point I should say is under the Auroria, although I am not sure of that. It is pretty well to the west in the Auroria. It crosscuts north. We cut the Jesse vein from the workings on the Badger State vein. It is pretty hard to remember these various workings. This drift is driven westerly on the Badger vein on the 1300, and at some point along here there is a little crosscut cutting the Jesse vein coming up here. The Badger state vein would bring you into the Auroria. Some of our workings follow the vein. It is from these workings we make the crosscut to the Jesse, and the vein we crosscut to is to the north of the Badger State. The crosscut comes out from the 1300 Badger and strikes the Badger vein and runs westerly; whether this is the exact position on that level I don't know.

Re-Direct Examination:

The Jesse vein is cut in the 1500 Poser. This

map, Exhibit 1 Corry, I think correctly shows the position of the Edith May vein where I know it. I think that is approximately right. I suppose the geologists all have theories of these vein systems, which formed first, the east and west, that is, the zinc and copper. It is rather a difficult problem to say whether the zinc or copper was formed first. My general belief is that the deposition of mineral, both copper and zinc was going on more or less at the same time, by the composition of veins, as they were being formed in different parts of the district. Now, investigation carried on seemed to indicate for instance the chalcocite is later than the zinc minerals in many of the veins that have been examined and studied, but on the whole there is no indication that a zinc vein was formed and later a copper vein came along and cut through it, or the other way. There is no indication that the copper vein was formed and later zinc veins were formed. It is rather a difficult problem. As to any theory why nature was so lavish in zinc around the Rainbow and copper down below, that is along the same lines. It is really a very difficult problem to tell, where you have several vein systems, more or less intersecting with a period of mineralization continuing while these fissures are being formed, and you get a very complicated mineralogical condition.

(Witness excused.)

[Testimony of John Gillie, for Defendants.]

JOHN GILLIE, a witness called on behalf of the

Anaconda Copper Mining Co. et al. 931
defendants, being first duly sworn, testified in substance as follows:

Direct Examination.

I know the history of the sinking of the Moose shaft on the Moose claim and why the sinking or raising of it was done and decided upon at that point. The Moose shaft was originally a prospect shaft sunk about thirty years ago. I think it is on the Auroria claim, or very close to the line, instead of being on the Moose; it was a small prospect shaft, and two veins were worked there, one north of the shaft dipping to the north, and one to the south, for shallow distances or depths; along about 1902 or 3 some parties, Malcolm Gillis and others, got a lease on this Moose claim, and sunk this shaft to the 300, continued it from its depth, and also made the shaft in pretty good working shape. They drifted on these veins both north and south of the shaft, on the two and three hundred, without any great valuable results to themselves or to the company, further than showing that there were two veins there; the company put in a diamond drill after they ceased this work, and from the station of this shaft at the 300, at an investment of about forty-five thousand dollars, put it in both ways, and cut these veins at greater depth; they did not show very much better there, and that shaft was abandoned. I believe it was sunk to the five and more crosscuts made, but, however, there were no great quantities of ore extracted from that shaft, and it was abandoned and unused for twelve years anyhow. About two

years ago, as our workings on the Badger State commenced to extend westerly at some considerable distance, we had no connection that way, and we needed ventilation; this shaft is well situated for that purpose, and was already some depth. We started in, put a plant on it and sank it, and continued to do sinking and raising from the lower workings, even at the present time, so that the work was resumed on that shaft as a ventilation shaft. We put it down so it could be used for mining operations, if we had to, but it is put down for ventilation purposes. It is well known by everybody that our ventilation system in connection with our mining is a large part of our expense; for instance, we work a shaft on the west end of the Gagnon, which is sunk 2300 feet, for ventilation alone, and never hoisted a pound of ore through it. The total electric hoisting power used by the Anaconda Company is 35,000 horse power. Ten to twelve thousand horse power is used in connection with our ventilation work, driving fans and so forth. Costs are increasing all the time, due to great depth, the heat from the oxidation of the ore in the timber, which gets greater as we go deeper; it is harder to ventilate; our supplies are costing more; one of our greatest supplies, powder, costs ten to twelve per cent more than a few years ago, our timbers costing thirty per cent more, and the expenses all down the line have increased, and our wages increase as our price in copper increases. Heat and lack of ventilation has almost everything to do with our

labor efficiency, because as we pass through the mines observing the men at work, if you get into a close place, why you can readily understand why a man cannot do a day's work. We will be making a forced connection often, and the air for a time will be in very bad shape, and you can see at once that the efficiency is very low, and that maintains even with our best ventilating system; men cannot do the work, and you cannot expect it of them, that they could do on the surface or at shallow depths. I am familiar with the developments in the Badger claim and that vicinity. On the whole, I would say the Badger State is favorable. We never expected to find a copper mine of the extent of the Badger there, and then again you might say it is disappointing for the reason that the big veins have not produced what we have found in similar veins that have produced considerable ore. The history of the development of the Badger State is,—in 1903, a crosscut was started north from the Diamond shaft, and run over 2000 feet across that country, and clean across the Badger State shaft; this was put down to the 1800 level, and a connection made with that before we started to do any development or mining on the veins. We have come up in that shaft. Since that time we have crosscut on the 10, 13, 16, 18, 20, and recently we have cut the vein on the 22, but it is quite recently, within a few days or a few weeks. It is quite disappointing even in the known ore veins, such as the Badger State, which has produced a large portion of the ore; there are

two veins on that property, the Emily and the Badger, that have produced the large amount of ore that has come from the Badger State mine; the Jesse vein, before we started any work, even the crosscut I spoke of from the Diamond, had been worked by the North Butte Company on the 12 and 1600 west, to their west line and to our east line under arrangement about paying for the work. We got them to drive on the 1200 westerly into our ground a few hundred feet, hoping that the ore would come in again. I had forgotten to state that they followed very good ore nearly to their line, within a few feet of their line, on the northwest corner of the Jesse and into the corner of the Gem line, there was a large strong vein, and the ore very good. The few hundred feet they ran in our ground under the arrangement to pay for the work did not show very good results. The vein was large but the ore too low to be economically valuable or merchantable, and after we got the Badger State shaft down we ran a drift out and connected with the work where they left off, for ventilation purposes. It is 1700 feet long, connecting with the North Butte, and we have never taken a pound out. The Jesse vein has been opened in the Badger State at several levels, and it is non-productive in every one of them. The Edith May while not on the Badger State claim, only in its westerly extension, has produced some ore, but it is not as productive as it was in the North Butte ground. In fact, the westerly workings are of no value. The ores were of no value

in either the Edith May or Jesse. Taking all of the development westerly of the plane of the Badger State shaft, well it has been on the whole disappointing. Of course, it has been favorable to the extent that we have gotten some considerable ore out of two other veins that we did not know of,—the Badger State and the Emily. All of them, even those veins, are playing out in places as you go westerly. The veins themselves continue. Taking the veins that point towards or from any of the Alice ground, I would say they are very unfavorable going westerly towards the Alice ground, of finding ore in the Alice ground. There is nothing on any of them that would indicate to me the probability of their carrying ore in the Alice ground, except that there are productive veins in the country that continue on. There is a possibility but not a probability. I could not, as an engineer, place any value on the Alice ground because of that condition, because those veins are pointing in that direction, having in mind the developments which are upon the veins. Down to the 10 I was familiar with the underground workings of the Alice in the early days, and probably the 1200. I have been quite familiar with the upper workings; have known the ground pretty intimately since '81. The only information that I have that the ground was worked below the 1000 is that there was one small shoot of ore that they did find some ore on the 10 that extended to the 13. It was so small that it was hardly payable ore. In

fact, the Alice mine has never been worked below the 10, other than development work. It was fairly well developed to the 1500. In view of the developments already on the Alice ground and its mining history, and because of its position on the Rainbow lode alone, being in the vicinity of producing mines, I would say they operate very much adversely to it. If there were no developments on the Alice and the Rainbow lode was undeveloped, and the Rainbow lode on it, it would have a greater value than its value today. As to the history of the dividends of the Alice Company, the larger portion of that was paid in the first fourteen years. 1880 to 1894, although some dividends were paid in '98, the total dividends amounting to one million and seventy-five thousand dollars. For the years 1910, 11, 12, and 13, the Anaconda Company has paid about forty millions of dollars, nearly equivalent to ten dollars a share on the thirty thousand shares of Anaconda the Alice Company owns, \$300,000.00. There was forty millions paid in that period, and had the Alice accepted this proposition, they would have been doing better in four years than they did in any other period of its history, even in 1880, so far as returns are concerned. As to testing and trying to find out if anything could be done with those zinc ores, since its acquisition by Mr. Ryan, it has been examined at numerous times. I told before about Mr. Dwelle. Mr. Dwelle was from the Empire. He was an engineer, a Colorado engineer, from Denver, connected with the Empire Zinc

Company,—I don't know whether definitely or continuously retained, but he went out on examinations for them, I know at numerous times. He appeared in about March, 1910, in Butte, came to my office and said that he was representing the Empire Zinc Company and wished to examine the Alice property. I referred the matter to Mr. Ryan and got a telegram from him to afford Mr. Dwelle every opportunity and facility for examination of the property. That examination he started and it covered a period of perhaps ten days or longer, and it was made pretty thoroughly, because I knew Mr. Dwelle to be an engineer of standing, and knew he had a number of men engaged on it, and he worked pretty faithfully on it. I requested that he leave with me a copy of his results, and I also asked for his report, and he said he could hardly do that, but he would give me a map and the assays that were made by him at our office, and he furnished a map that accompanied his report, and this map was traced from our Alice mine map with the additions of some work that he put on himself with a compass, and the markings of the numbers of his assays. From Mr. Dwelle's results as put upon this map I made what I regarded an average of his results and which would be practical for mining purposes for anybody mining that zinc ore, for the reason that it was continually coming up. The excitement and the big zinc deposits in Butte seemed to spread and many engineers visited there and would ask for an analysis of the ore, and this analysis I had pre-

pared from the best information I could get, and it is such that I know would represent a considerably large tonnage that I know could be found developed on the Alice properties at that time. I base that statement upon my knowledge of these ores. I call it the average analysis of Alice ores from the 600 up. Of course, this does not mean clean to surface, for it is practically mined out for a couple of hundred feet, but the 600 up, say at the 200, zinc 11.2, lead 5.6, iron 10.2, copper 4/10, insoluble 45.2. These are all percentages; ounces of silver per ton 5.5; ounces of gold per ton .02 or forty cents. The expenditure of money made by the Butte and Superior experimenting on zinc ores ran into large amounts,—very large amounts, hundred of thousands of dollars. To take hold of the Alice ore you would have to go through somewhat the same processes. There is no process so far as we can ascertain that will treat those ores. If I was going to develop the Alice ground as an independent proposition, I could give an idea of the maximum amount to be expended to explore for these ore bodies, off. I have not figured on it, but I would start in and say that a hoist and compressor plant and pumping plant would cost you from one hundred to one hundred and seventy-five thousand dollars; to unwater the mine would cost you at least fifty thousand dollars, and perhaps a great deal more if the shaft should be found to be in bad repair, as we know portions of it are. This latter figure of fifty thousand dollars I place on as close an estimate

as I could in making one recently for the La France properties or the Lexington, similar workings to the Alice, and water standing to the same level, and it cost more than fifty thousand dollars to de-water it, and the Alice would take as much. Before the Alice would be ready to do any work, you would be in the neighborhood of two hundred thousand dollars. Then you could start in on your mining work, depending on the amount of development you would do. The reasonable cost of that is ten to twelve and a half a foot, depending on the kind of ground. If you sank a shaft it would cost you one hundred dollars per linear foot. I knew that Montana Zinc mill, the Wisner mill that was operating on the Alice very well. I was up there every week or two while the thing was operating, because I was very much interested in it. It was a new feature in milling and reducing ores in Butte, and they had some novel machines there. I saw enough of it so that I could state that it was an apparently intelligent, serious attempt to solve those ores. They had the modern machines, the electrostatic machine, and from the amounts of money they spent it was an earnest attempt to work out the problem of reducing those ores. On the strike of the veins as they run through there, they are about a couple of thousand feet in the Lexington properties. With reference to the copper veins to the south or east, compared to the Alice and the probabilities of striking them, they are a little closer to the copper producing area, with some large veins tending or

striking in their direction. There has been commercial copper ore mined from the Lexington mine itself in small quantities. There was an attempt made with a zinc process on the Lexington ores in late years by the Heinze interest, the LaFrance Company. The result of that was they put up a large mill, a mill that would cost, equipped, seventy-five or one hundred thousand dollars. They had many different kinds of machines in there, and apparently the mill was as up to date as anyone knew how. It was a failure,—the reducing of the ores. In my connection with the mining business, I have become reasonably familiar with the manner in which copper has been sold during the last twenty years. A few hundred pounds of copper sold to the local foundries would represent the sale or consumption here, running back prior to '99, the time of the Amalgamated's acquisition in Montana. Practically all of the copper used in Montana comes here in a manufactured form—wire and brass. As to how copper is sold, it is usually delivered at the customer's request. If he has a warehouse or a factory, it is delivered at his point of use. If copper is sold to a man in London it means delivery either in London or South Hampton, and the delivery is at the expense of the seller. Of course, in order to compete, you have to keep stocks at different points. If a customer came in and you could not deliver it to him at once he would be forced to go elsewhere, with the result that the large concerns keep copper for delivery at foreign

points. For a company like the Amalgamated Copper Company it has been practicable only in a small way to sell its copper direct to the consumers or direct in the market. They spoke of the Parrott Company. It sold some of its copper direct to Mr. Farrell, who originally owned the Ansonia Brass Works, and he bought copper from the Bridgeport refinery, and they did get copper direct. Mr. Farrell was president and one of the largest owners, and the way Senator Clark works, he uses some of his own copper and purchases on the outside. Outside of those two concerns none of the other companies can sell and dispose of copper themselves as a general business proposition. If they had the copper they might be able to make the sales themselves, but not as a business proposition. The Amalgamated Companies, outside of the Parrott at the time of the Amalgamated Company's formation in '99 generally sold through the United Metal Sellings Company owned by the Lewisohn Brothers, the predecessors of the United Metal Sellings Company. The Lewisohn Brothers had a selling agency, subsequently conducted by the Selling Company. The Anaconda Company during that period sold through some of those agencies. There have been two companies, the Calumet and Hecla, that have always sold all of their own copper, the Lake Michigan copper and the Phelps-Dodge people sell their own copper. The Calumet and Hecla sell for various lake concerns, and also Phelps-Dodge. As to the acquisition by the Amalgamated of these prop-

erties, I don't think it could affect competition between them as to the producing and selling of copper for the reason that it never controlled enough copper, even if it was disposed to. They were selling through agencies even at that time. Every mine has an end, and in order to prolong the life of a mining company it is necessary to acquire additional property. That would be the first thing. Since 1899 the Amalgamated Copper Company has been mining ore at the rate of about eight to ten thousand tons a day, and for the last seven or eight years we have been mining at the rate of thirteen to fourteen thousand tons a day. As to the comparison between the depletion and the acquisition of ore deposits since 1899, in the amount of copper they would control, well, no, they haven't added as much in the way of ore reserves as they have exhausted during that period. I don't know what extent of ownership they have in the International. I am afraid the Amalgamated has not kept pace with its production. It has exhausted its resources so far as its metals produced are concerned. The International has a copper plant at Tooele. It has a custom plant. The International has no mines. The copper produced there amounts to a million pounds a month or less. Some of them are custom ores. The coppers are turned back to the account of the miner or producer. I do not know what the rule of the International is. I know in the case of the North Butte, it is turned back to them.

Cross Examination:

As to whether Mr. Ryan, the Butte Coalition Company, the Alice Company or the Anaconda Company has ever done anything themselves towards experimenting with the Alice ores for the purpose of devising a process or system under which they could be profitably worked,—so far as the Alice is concerned, give them time. The original owners had to have twenty-five years, and they did not do any experimenting, even after you got the wonderful results told about by Mr. Walker. In turning that property into the Anaconda Company, the Anaconda Company, Mr. Ryan and anyone connected with it have done the fair thing to the people concerned, and it riles me to hear the testimony introduced here by some of the witnesses. Look at the earnings for the Alice Company on the thirty thousand shares of Anaconda stock as compared to anything done by them in the last twenty-five years. They did something in this way, that everybody who came forward and asked an opportunity to examine, sample or have samples forwarded to them, have been given every facility. We did not mention here the Beers-Sondheimer Company. We shipped about ten tons of ore to Germany for them, and afterwards, we made a shipment to Germany at their request. No, we did not spend any money in endeavoring to develop a process by which the ores could be profitably worked, but we could have developed the property if we had

owned it uninterruptedly or we had been allowed to go on there through the Badger State shaft. We could have gone up there, and we could have drained the ground and could have developed that ground at great depth at less than we could have from the surface, but upon this legal controversy, the Anaconda Company could not spend that money for that purpose, so that whatever purpose we did have has been interrupted by these proceedings. We have stopped work to the extent of going north from the Badger State. We have not stopped because we never started, but that was our plan originally, owning the Alice ground, or after it was acquired. However, since Mr. Ryan became interested in the property, whatever may have been the reason, we have not conducted any operations ourselves for the purpose of testing these ores, but we have given anyone who wished to, the opportunity. The Butte and Superior has been spending thousands of dollars for the purpose of perfecting a process, and they have much more amenable ore. Senator Clark has been ~~spending~~^{spending} thousands of dollars in the construction of mills and so forth to develop the Elm Orlu ores. The building of the concentrator by Senator Clark is now in operation. It is about completed. I could not say what it cost Senator Clark, perhaps a half a million dollars, and I believe that is for the purpose of working the ores from these two claims; principally, I think he expects to do a custom work—custom business. We are very well satisfied that we know what is above

water level. I have been in the mine and taken samples, but we have not made any thorough sampling of it. Considering the market value of metals, the gross value in the ore as shown by my average of the assays,—well I gave you 14.2 per cent zinc; that is 284 pounds, at five cents a pound is \$14.20. That is what I understand you want. 5.6 per cent lead is 112 pounds per ton at four cents, \$4.48; $\frac{4}{10}$ of a per cent copper is 8 pounds to the ton, at 15 cents is \$1.20; perhaps that is a little high. It is not that high. We will count it $12\frac{1}{2}$ and call it a dollar; $5\frac{1}{2}$ ounces of silver at 56 cents an ounce is \$3.10; $\frac{2}{100}$ of an ounce in gold at \$20.00 an ounce is forty cents. That sums up gross \$23.18. These figures from which this average was worked out are the figures that were given me by Mr. Dwelle, that is, some of them, and I think possibly I used some other figures, but principally Mr. Dwelle's. There has been some elements of increase in the cost of mining in the Butte camp, owing to the increased depth and that kind of thing. As to the final result due to recent economies, such as electric power and such things, it is probably at a standstill, or even up with say seven or eight years ago. We make annual reports on the costs, some of the comparative costs. No, I don't think our annual reports show a steady diminution in the cost of mining per ton. The officer immediately over me is Mr. C. F. Kelley, vice president of the company and Mr. Thayer President of the company. I don't remember that my attention has ever been called to this

reference to the Moose shaft in the annual report of the company for the year ending December 31, 1912, introduced in evidence. This shaft can also eventually be connected with the Badger State workings, and will be of great assistance in perfecting ventilation, and you remember what I stated, that we were sinking and raising that shaft. We are out there on those lower levels. We are making raises to prospect those veins. The prospecting was incidental. If we did not need the shaft for ventilation we would not put it down. No, we haven't connected the Moose shaft with the Badger State workings. We are underneath it at several points. At two or three of the levels, the 18 and 13 is way out from where the Moose would come down we are making raises there. We sank from the top and suspended operations on top for a time. We are down about 900 feet now. We have the vein opened up down there, and we are making the raises through for the reason that we take the waste the other way and use it in the slopes of the Badger State mine; so that we are really at a depth of about 1800 feet below the collar of the Moose shaft. Those are the Badger State workings, referred to as not showing very well on the veins out there. It has been two or three years since we started sinking this Moose shaft. Two or three years is not a good long time to work on a ventilation shaft. Our Gagnon shaft took us nearly three years to sink 2300 feet. We have not had any ventilation through the Moose shaft. We have forced ventilation by

means of fans. The Jesse has produced practically no ore at all in the Badger State. Perhaps when I testified about that before we were in the dark about it at that time. I don't remember what I testified to, but I know this much that where the Jesse goes off to the northwest lying in just the position that the Badger—it is pretty hard to tell in which vein you are in—the Jesse goes to the northwest and the Badger to the west. That condition may have made us believe when I was testifying before that I thought we were working in the Jesse, but we knew even then that there were long distances of unproductiveness. As to the production of the Badger and Emily, we were not developed very completely at that time. We had ore from the Emily at that time.

Q. I want to read your testimony to you, as it appears upon pages 165 and 166: "Q. Mr. Gillie, you say that the ores occur rather intermittently in this Blue vein series—in this blue vein series—the northwest and southeast series? A. Yes, sir, intermittently, such as that there are large chutes of ore, and with large barren places in them. Q. And this barrenness, does it occur only upon the strike, or does it occur upon the dip as well? A. Both vertically and horizontally. Q. That is to say, you may find it on one level, and on the next level below it may pinch out, and you won't have it on the next level above? A. Yes, sir. Q. So because you do not catch it on the twelve hundred foot level, you do not despair, but you go to work and develop it on some of the other levels of the

Badger State? A. Yes, sir. Q. What other levels do you find it on on the Badger State? A. On the thirteen and eighteen; we have not yet got connections definitely through on the eighteen to know that it is the Jesse, but we are pretty sure that we have it. Q. And it apparently comes in at depth? A. Some of it. Q. And you feel that you have it on the eighteen hundred foot level? A. Yes, sir. Q. You have got apparently commercial ore in the Jesse vein in the Badger State? A. Yes, sir, we have."

A. That is what I refer to there; you could hardly identify the difference between that on the

Q. It is a question as to the identity of the veins then. What you spoke of as the Jesse vein at that time you now think it is the Emily or Badger?

A. If it is a productive vein it is a portion of the Badger vein,—anything that produces there.

As to the development on the Badger State being disappointing, and as to our hopes or expectations about the matter, well, of course, on the start they have been equal to what we expected; that is, they have been on the whole a great success, and will produce probably a great deal of money, but after we had been working there for a considerable time, and opened up two of those very profitable veins, which we thought would go to depth, why, they don't show well in the lower levels, so it has been a disappointment in that way. I stated it was a success as a whole, but it was a disappointment later. Well, I hardly expected at one time

that it was going to be one of the greatest producers of the camp, but I thought it was going to be a good mine, and it is. It will show a large profit. We expected to get any veins that are within the claim. Well, in the beginning we crosscut on the 1800 and we cut some ore there, enough to warrant us in sinking that shaft. We cut at least three or four veins attached to the property, three veins principally, two of which showed very well. At least down to 1913 we were altogether satisfied with the results of our work in the Badger State, and we are really satisfied with our work on it yet. Of course, we have been disappointed in some of the veins. I asked Mr. Dwelle for the report made by him to his company after his examination of the Alice. I said to him in this way: We were pretty familiar ourselves with the Alice property, and as he was going to make the examination on the outside, an independent source, that I would like to have his conclusions, his report. He said he would, and gave us his map containing the assay. He stated he could not give us his report he was making to his employers; that he was working for other people. They do not do any business with the Empire Zinc Company in the West. I hardly think they do in the East. The only report we got from the Beers-Sondheimer engineer was in conversation. I do not know where the New York office of the Empire Zinc Company is. The Beers-Sondheimer is at 42 Broadway. This Dwelle examination on the blue print which has been

marked as an exhibit here, is a table which purports to give the assay value of the samples. The first at the head of the list shows zinc 9/10 of one per cent, lead a trace, and silver 4 ounces. This is waste, and we don't consider that. I have Mr. Dwelle's information from himself that that is wall rock taken for his own information. An ordinary miner ought to know enough not to send that up. The appearance of that would not indicate that it is ore. Referring now to sample No. 446, showing 8/10 of one per cent of zinc, a trace of lead and 8/10 of an ounce of silver; that is very low grade. It may be a horse in the vein, extending from its position. In endeavoring to sample a mine for the purpose of determining what the value of the ore in it is, you would very naturally be expected to sample that kind of stuff that would be left in the mine, because you could not tell what was waste and what was not waste on mere inspection. You need not use it however, if found in such a portion of the vein known as wall rock or a horse in the vein. You need not use it in your conclusion. I did not consider all that long list in my average. This long list was averaged by Mr. Febles excepting number one, I think was omitted, but I used the samples that in talking with Dwelle and agreed with him would be a fair average of it. I did not average all of them. Mr. Dwelle had three or four samples that he would consider would be very representative of the property and we did it together from analyses that I gave you yesterday. It is different

from the average as given by Mr. Febles. That is, it is slightly different. Now looking over these samples, they are indicative of almost any vein, and you must remember that these are taken in streaks of the veins. These widths, as represented here, don't represent the whole vein; for instance, he says thirty inches; one place may be good ore, and then he takes three feet, another sample in the same vein. They would widely vary. They might widely vary in the different streaks. I spoke about the LaFrance property—the Lexington. I don't think there was ever any injunction issued, but they were operating a dry mill process there, electrostatic process, dry crushing, and they were causing a lot of dust in that vicinity, which was floating out in the atmosphere, and they were threatened with proceedings I think it was about ready to suspend anyhow. The predecessors of the Anaconda Copper Mining Company I know in 1883 and 4 sold its ore in Swanzee, unrefined and untreated. It was sold as crude ore, but about their copper prior to 1899, I don't know definitely. That matter was handled by Mr. Haggin about those times, in the East; I don't remember. Prior to that time I don't think there was any selling relation between the Anaconda Company and the Boston and Montana Company, but there was some with the Parrot Company. I know there was matte treated back and forth at different times. Well, I don't know whether there were selling agencies for these various companies prior to that time when the various companies put

their product on the market and sold it, but I know the Parrot handled its own product. It was presumably getting the best price it could for its copper, which would be natural, and each was endeavoring to get the business. There was competition between these companies prior to 1899 to the extent that the Boston and Montana and Butte and Boston were selling through one concern. The Anaconda Company was selling somewhere else. You might call that, inasmuch as there were two concerns, that there was competition. They may have occupied the same position as two drygoods stores on the opposite side of Main Street in Butte would.

Re-Direct Examination:

Well, the company producing the copper, when it places it in the hands of a selling agent, the agent has exclusive control over it, and the producer cannot order it sold at any time at his will. It rests at his will. However, the agent must in nearly all of the contracts, advance up to eighty-five per cent of its value to the producer in funds, and the selling agency then holds the copper until sold, and then is reimbursed. On Mr. Dwelle's map here, I could, or an engineer or anybody acquainted with the map could tell where the samples were taken. It purports to show where they were taken and the widths too. If you take the scale of the map and see the width of a certain drift, you can get the lines very closely. The Wisner plant operated at least a year and a half, when it was destroyed by fire. Since the forma-

tion of the Amalgamated in 1899, I do not know of any copper property, now a big producer that was sold to outside and independent parties by the organizers or directors of the Amalgamated Copper Company, or any of them; in other words, property that was not brought into the Amalgamated, but owned by them and controlled by them and sold to independent interests. I don't remember of any property that Mr. Rogers was interested in or that he controlled that since that time has been sold to outside interests. Mr. Rogers and Mr. A. C. Burrage, a director of the Amalgamated, controlled the Chino, and that was controlled by them since the time of the formation of the Amalgamated and sold by them to the Guggenheims,—Haden-Stone interests. The Guggenheims are the American Smelting and Refining people. It has no connection in business; it is an independent concern. The production of the Chino last year was a little more than fifty-three million pounds. The property was formerly known as the Santa Rita. The name of the corporation now is the Chino Consolidated Copper Company. That was sold by Mr. Rogers and Mr. Burrage, or the corporation they controlled, since the formation of the Amalgamated Copper Company, along about 1904, 1905 or 1906. Somewhere in that neighborhood. That mine is in Grant county, New Mexico, near Silver City. I can give the average price of copper per year from 1899 down to the present time, including 1899. The source of my information is considered authentic.

It is the same figures that settlements are based upon, the Engineering and Mining Journal. I will state that in 1899 and prior to that, the price of lake copper was the controlling market figure, and electrolytic was not usually quoted, as an ordinary price; after that they quoted both electrolytic, because electrolytic was coming largely into the market. The Butte District produces electrolytic altogether. For 1899 the quotation I have is lake, and the sale price of electrolytic was from $\frac{1}{8}$ to $\frac{1}{4}$ cent a pound below that. In 1899 lake copper quotation—the average price was 17.61 cents. I will give it by years. 1900,—now I will give electrolytic,—1900 it was 16.19; 1901, 16.117; 1902, 11.626; these are cents per pound. 1903, 13.235; 1904, 12.823; 1905, 15.59; 1906, 19.278; 1907, 20.004; 1908, 13.208; 1909, 12.981; 1910, 12.783; 1911, 12.376; 1912, 16.341; 1913, 15.269.

Re-Cross Examination.

There has been a large foreign increase in the demand for copper in all these years, and a continuous increase, both foreign and domestic. I went down there in 1898 or 9 to examine the Chino at the request of Mr. Burrage and also became interested, inasmuch as I put up some money and got some stock of a company that was going to take over the Chino properties; the development down there hung fire for a long time, and it looked like a dead one, you might say, and they made an offer for the stock and everybody sold out. It was a producing property in 1899. I could not say how much it was producing in that year. I

could not tell you exactly, but it has been producing for perhaps two hundred years. It is one of the old Mexican properties. The source of my information about Mr. Rogers being interested in that property was my conversation with Mr. Rogers, Mr. Daly and Mr. Burrage. I don't know under what name the Chino was organized, but it was about 1906 or 7. Prior to that time it was known as the Santa Rita Copper Company. In 1899 it was not producing very largely. It was producing in 1899 by lessors largely, when I was on the ground. It really was not very much of a factor in the copper world at that time. Mexico has never been a very heavy producer of copper until recently. In production it occupied no rank whatever with the Butte properties at that time—the Boston and Montana or the Anaconda. Lessors were operating when I went down there. I suppose a good many more lessors were operating on it than on the Alice. Several hundreds were operating down there at that time.

Q. I notice the following in the Copper Hand Book for 1910 and 11: "The mine has made a small production for the test mill and shipped the concentrates to the new mill. The Chino should be a producer before the end of 1911." Apparently it was not producing at that time?

A. No, not producing, but they were acquiring lands and millsites; I know prior to 1911 it took them considerable time to strip some of the ground, to strip the ore and build the mill; only last year it did become a large producer.

I cannot give you the figures of the Butte production for 1913 or the Montana production. I have not got them with me. I thought you had the advance circular from the government. It would give it there very closely, if you have it there. I don't know whether anybody has a file of that here in Helena. It is very little more than our own production. I can approximate it.

Re-Direct Examination:

The Santa Rita produced during the operations of the Santa Rita Mining Company, the company which Mr. Rogers was in. Mr. Thayer and Mr. Risk were two of the lessees on the property. After 1899 at the time of the sale, Mr. Burrage was in charge of the Santa Rita Company. Mr. Thayer was manager there. In the first place he had a lease on the property from the Whitney Estate that had the ownership. That was about 1898 and 1899 it was turned over. They sold the option, and Mr. Thayer's people sold to Mr. Daly, Mr. Burrage and Mr. Rogers. Afterwards Mr. Thayer was put in charge of the property, about 1901 or 2 or 3, and had a lease with Mr. Risk on a portion of it, in addition to looking after the other leases. The big production now is from low grade porphyry or disseminated ores. Mr. Thayer and Mr. Risk put up a small mill, a very limited one; there was no large mill until the Chino Company completed one recently. There was a mill there for this porphyry ore. The Mr. Thayer I speak of is the President of the Anaconda Copper Mining Company.

Re-Cross Examination:

The porphyry producers have practically all been developed since 1899. The Nevada Consolidated is another of the Guggenheim properties. They have always been considerable producers, but not as large as they have been in the last couple of years. They really control and sell more copper, it is so reported, than any other concern for the last two years.

Re-Direct Examination.

There has been a pretty steady ratio in the increase from year to year in the demand for copper. I have not got the percentage that has been put in. It has been put usually nine or ten per cent. The ratio of increase for copper used has been going along at about ten per cent for the last few years, that is, annually. That is based upon the amount consumed. The consumption has been increasing at about ten per cent annually. It is more nearly nine than eight per cent.

(Witness excused.)

[Testimony of **Albert C. Burrage**, for Defendants.]

THEREUPON the deposition of **ALBERT C. BURRAGE**, theretofore taken at the instance of the complainants, was introduced and read in evidence by the defendants, and is as follows, to-wit:

THE WITNESS: My name is **Albert C. Burrage**; I live in **Hanson**, **Plymouth County**, **Massachusetts**; by profession I am a lawyer; I have not been in active practice for fourteen or fifteen years. I was concerned in the organization of

the Amalgamated Copper Company; I was not one of its original directors; I became a director shortly after its organization, and am still a director; have remained continuously on the board since its organization. Upon its organization, the Amalgamated Copper Company became the owner of large interests in the stock of the Anaconda, Washoe, Parrot and Colorado Smelting & Mining Company, and, I think, control; I do not recall now from whom the stock came directly to the Amalgamated. I don't think it was acquired from one or more of the gentlemen who had engaged in the organization of the Amalgamated. The purpose of the formation of the Amalgamated was to acquire interests in any company or properties which its directors or stockholders saw fit to make a purchase of. I have no doubt that it was the purpose to acquire these stocks and these companies which it did acquire immediately upon its organization, among others, perhaps. The purpose of the company was undoubtedly to acquire those interests. The Amalgamated was not organized to and it did not thereafter go out into the general market to pick up these stocks wherever it might find them in the market after it was organized. I could not say whether those gentlemen who were interested in the organization of the Amalgamated conducted a purchasing campaign prior to that time for the purpose of acquiring the interests which were subsequently transferred. The company was organized to purchase, under its charter, if I remember rightly,

any shares of mining property that it saw fit. I don't know that the Amalgamated Company went out into the market to purchase shares after that. It undoubtedly did acquire shares afterwards in some companies, but I don't think it engaged generally in the business of buying shares or properties. When the Amalgamated was organized it was undoubtedly known that it would be able to acquire the interests which it did immediately acquire thereupon. I don't know by whom those stocks which were en bloc transferred were held. I was associated with Mr. Henry H. Rogers, primarily, in the organization of the Amalgamated. There was a temporary organization by the office people in New Jersey, and some from my own office, and those individuals were almost immediately succeeded, if I remember rightly, by the permanent board of directors, and that board I think I can recall, was Henry H. Rogers, Marcus Daly, William Rockefeller, Roswell P. Flower, James Stillman, Robert Bacon, Frederick P. Olcott and myself. I do not recall who the incorporators were. I have no doubt they were the men you name, Charles Burrage, Charles N. King and Edwin T. Rice, but I have forgotten. Mr. William Rockefeller was also associated with me in the negotiations which led to the organization of the Amalgamated; Mr. Lawson was also connected with the matter; Mr. Lawson's connection with the matter was more or less discussion between him and myself in regard to the matter, on account of certain interests which he had already acquired

himself individually in Butte. I don't know that Mr. Lawson conferred with anyone else but myself; I conferred with Mr. Rogers; I undoubtedly had interviews with Mr. Rockefeller. I was not charged with any work looking to the acquisition of the stock which eventually was transferred to the Amalgamated upon its organization. I was not in the employ of anyone or under contract with anyone. I went to Butte in the early part of the summer of 1898; I had never been there before. I was asked to go there to get an idea of the value of the Butte & Boston mining property. I was there a few days and went underground in the Butte & Boston mine. I then came to New York and talked the matter over with Mr. Rogers, at whose request I had gone to Butte from San Francisco where I had been for some time. That was the first matter in connection with it. I don't know that you would care to go into details, but at that time I came to the conclusion on my visit to Butte that the Butte & Boston property was not of great value, that it was engaged in litigation which would be very bothersome. I did get a very high opinion of the value of the mines on Butte Hill, and I stated to Mr. Rogers upon my return to New York that it was a splendid field for investment, in my judgment, and that I hoped the matter would strike him as it had me. Mr. Rogers had made a loan upon some shares of Butte & Boston stock, and his request for me to go to Butte was to ascertain as to the value of those shares. Mr. Rogers was inter-

ested in what I said about Butte, and said he might be willing to consider going into the matter further, and if I had any plan or suggestion to go ahead and formulate it. I think that was all. I said that I would like to go out there again and study the situation more carefully. I think I went out the following January. I may have gone there once in between; it is a long time ago, and my recollection is not very clear, but I remember going out there in January and staying for three or four weeks, and taking with me letters of introduction to Mr. Marcus Daly, which Mr. Rogers had obtained for me in New York. I then spent some time examining the Anaconda properties. I had no engineers with me; it was simply a general business investigation. I then went back to New York and reported to Mr. Rogers that I thought it was a very interesting field, that the Anaconda mine was one of large value. That was practically all at that time. I am not sure as to the date when we acquired some Butte & Boston shares,—quite an amount. When I say “we” I mean Mr. Rogers, Mr. William Rockefeller and myself; Mr. Rogers handled the matter, and I think that I had nothing to do with it here in my own office. Subsequently there were negotiations in New York concerning the various Anaconda properties, but I did not participate in them. I don’t recall where those were with Mr. Daly or Mr. Haggin or both; I don’t recall who the individuals were. Subsequently I knew that it was determined to form a company to take over such

properties as were desired, and I knew the matter was discussed between Mr. Rogers and myself and undoubtedly by him with others, and as a result the Amalgamated Copper Company was organized in 1899, in the Spring. I went, on my original visit to Butte in June, 1898, only in connection with the Butte & Boston. Subsequently, in 1899, I went over the Anaconda properties, the Washoe, and some gold mines. The Diamondville and the Belt, and went over to the Anaconda smelting works, and I think there were some other local stores there, the Hennessy Mercantile Company and the Blackfoot Milling Company property, which I did not visit, but which went along, and likewise the Butte, Anaconda & Pacific Railway Company, which I think was owned by the Anaconda. I think I undoubtedly inquired about other properties in Butte, because I was trying to get all the information I could bearing upon those properties, and that would necessarily require investigating what I could of the other properties, but I was trying to recall whether I went into any other properties at that time. I might have gone into some of the Boston & Montana, but I am not sure. I went into the Parrot when I was there in June, 1898; I did not make an examination of the property, but just went in to see the vein. I am sure I did not go to either the smelter or mines of the Colorado Company. It is pretty hard to recall what properties became the subject of consideration between us in connection with the project that was then under consideration, but I know I

discussed the Butte & Boston, the Anaconda, and the Washoe, and I am sure I discussed the Parrot and the Boston & Montana; I do not recall any others. I do remember that I did not go into the Colorado and that I did not see any of the people there connected with it, but I made no investigation of it there at all. My recollection is that Mr. Leonard Lewisohn of New York had that property; either bought shares or had an option; at any rate, it was under his control, but it was unknown to me physically at that time. I think the Colorado Company was the subject of consideration by us later; that is, before the incorporation of the Amalgamated. The litigation pending at that time involving the Butte & Boston, was the Heinze litigation. The corporations mentioned did not go into the Amalgamated; there were only certain interests in them, as I recall. The Amalgamated acquired a certain amount of stocks of these particular companies; whether it acquired a controlling interest in each of these that we have spoken of, depends on what you say we have spoken of. It acquired no interest in the Butte & Boston or the Boston & Montana, and we have spoken of those. Those we have spoken of as having been acquired are the Anaconda, Washoe, Parrot and Colorado Smelting & Refining Company; Mr. Rogers already had a loan on some Butte & Boston stock, and subsequently acquired the Butte & Boston stock. As to whether purchases were made by the same adventures of Boston & Montana about the same time, your information is better than

mine; I have no such recollection; I do not know that I would call these gentlemen adventurers. I do not think that comes within the law, sir, as an investor in mining shares is not necessarily what you would call mining adventurer; not if my understanding of the language is correct. I wish to say, to the best of my recollection at the present time, that neither Mr. Rogers nor myself had bought any shares of Boston & Montana. I may be in error, but I think not. I think you are absolutely in error when you state that immediately upon the organization of the Amalgamated Copper Company and the acquisition of the interests which it did acquire in these other companies, there appeared, in Butte at least, to be entire harmony between the management and operation of those properties and of the Butte & Boston, and Boston & Montana, Mr. Hyams being generally in charge of all of them in the spring of 1899. To the best of my recollection, Mr. Hyams had not the slightest thing to do with those properties which were taken into the Amalgamated, either before or immediately after its organization. Not only that, but Mr. Hyams, if I remember rightly, had been associated with Mr. Bigelow, and they were in control of the Boston & Montana and the Butte & Boston. My recollection is distinctly at variance with what you have stated to be the facts. It seems to me that you really hardly have any right to make a statement of fact as a witness would, and then if that statement is contrary to what I believe to be the truth, ask me to back it up. The

Amalgamated Copper Company shortly after its organization acquired the stocks. It came about undoubtedly that it required the stocks of those companies and not of some other companies, as Butte & Boston and Boston & Montana, because Mr. Henry H. Rogers wished to purchase those shares, and believed it was a good purchase. There were no other companies whose stocks Mr. Rogers regarded, as disclosed in his negotiations with me as desirable to thus acquire, that I recall. As to whether I did not regard it as desirable to acquire the stock of the Boston & Montana for the Amalgamated Copper Company, I would like to answer that fully by saying that I had a very high opinion of the value of the Boston & Montana mine. I would have liked to have bought the whole of it if I could have. I could not, and I had no interest in it, and as I recall it, no shares at that time. Butte & Boston, the other company which you have spoken of in this connection, was in litigation. I think it is undoubtedly correct to say that it would not have been desirable to have acquired it at that time because of that fact. It was not acquired until a long time afterward. The advisability of acquiring the stock of that company may have been canvassed with Mr. Rogers and it may not; my recollection is that he was opposed to it, and that recollection being pretty clear in my mind, it probably is true, it must have been true, that the matter was discussed, but in view of the pending litigation it was dismissed and we concluded not to acquire any stock of that company for the

Amalgamated. My recollection is not so clear in regard to the Boston & Montana, because my recollection is that the people who held that were not disposed to sell it; that was regarded as one of the best stocks in the camp, and it is today, for that matter. The Boston & Montana properties were not involved in litigation to the same extent as the Butte & Boston, but it was substantially the same kind of litigation in that, if I remember rightly, that part of their ore bodies was attacked, but not to the extent and proportion to the whole as was in the case of the Butte & Boston, the chief contention being concerning the apex of the Johnstown-Rarus, it being contended that in its descent into the earth it passed equally into the mines of the Pennsylvania formation, being the Butte & Boston property, or the Boston & Montana, but I have a recollection that one of the principal pieces of litigation with the Boston & Montana was in connection with the so-called Minnie Healy, but my recollection is not clear when that came. The Minnie Healy litigation started prior to 1902, because Mr. Marcus Daly died sometime prior to that, and I remember discussing with him the Minnie Healy case when I was in Butte; he died in December, 1900, and my recollection is that the Boston & Montana acquired the interests of Miles Finlen in the spring of 1899, with a suit of that company pending. I don't know of any other companies that were canvassed as being desirable acquisitions. I don't know that there was any reason one way or the other for stopping there or go-

ing on with other companies; it so happened that those properties were under discussion and they were taken over; that is, the interests which were acquired were taken over; there was no discussion or reference to any other properties, absolutely none outside of Butte, in any way, and I cannot recall the discussion of any others in Butte; I would simply say, because evidently Mr. Rogers did not consider any other properties; he was the dominant spirit. As to why Mr. Rogers did not go on and acquire, or seek to acquire, other properties in Butte, Mr. Rogers is dead, and therefore not here to speak for himself; it is fourteen years ago and I would hesitate to undertake to give the motive that actuated him; I can only guess, and that you do not want; he may have revealed the motive; I do not recall anything of that sort. There were other properties in Butte, but I don't know whether they were equally rich and desirable; my belief is to the contrary. Do you mean to say that there are other properties in Butte of equal value to the Anaconda and the Boston & Montana? You have lived there, but until you said that I did not know it. The properties of Senator Clark, were as valuable as those of the Colorado Company; reference was made to those companies which included the Anaconda and the Boston & Montana. At that time I did not think so much of the properties of Senator Clark. I do not know whether I would have put them alongside of a minor property like the Colorado Smelter or not. It was the same vein on adjoining property, if I

remember rightly. Whether it was longer on the vein or not, I do not recall. As to whether the Parrot was on the same vein, it certainly was not to compare with the Anaconda and Boston & Montana. The Amalgamated did some years afterward acquire the controlling interest in both the Butte & Boston and Boston & Montana; I have forgotten the date. The Amalgamated did not, so far as I know, go out and acquire in the open market the shares in the Butte & Boston and Boston & Montana. My recollection is that those shares in those companies were taken into the Amalgamated at a time when I was in California in the winter, on a long vacation, and I know nothing of those negotiations. I had nothing to do with them, and knew nothing of them. I have no knowledge of when the effort thus to accumulate those stocks in the hands of certain individuals with a view to turning them over to the Amalgamated did actually commence. I do not know through whom, if through anyone, the purchases were made; I recall having a large interest myself in the Butte & Boston and having sold those shares in the open market, unfortunately, before the rise came; pretty good proof that I did not know anything about it. If you say that the absorption of those companies was in 1901, then I sold prior to that. I have already told you that I knew nothing of how the controlling interest in the Butte & Boston not having passed to the Amalgamated upon its organization, it did subsequently acquire that control. I cannot tell you why Mr. Rogers

and associates, having acquired the control of these stocks which subsequently were transferred to the Amalgamated, he and his associates did not hold them, or why a separate corporation was organized which became the holder of these stocks; it is not within my knowledge as to why Mr. Rogers did not or did do a thing. I canvassed with Mr. Rogers the purpose of organizing the Amalgamated as a holding company for these stocks. I do not think he outlined his purpose at all; I recall distinctly having many interviews with him after my first visit to Butte, and before my second, and after the second, wherein I tried to show him the very great value of the Butte mines and the advantages that would come by a large ownership in the big profitable mines. There were many discussions on that. As to why Mr. Rogers and his associates, thus having made their investments in the stocks of these various companies, organized another company and turned those stocks over to it, I can only answer for myself and I am very ready to do that. I should have been glad to have seen a company organized to take in all of the large producing companies in the central group at Butte because I believe that such a company would make very great savings, economies, and would benefitiate that wonderful hill as could be done in no other way. Mr. Rogers evidently followed his own course, pursued a different one from what I advocated, and that company alone was formed. Why he did that I cannot say; I know what my wishes were. The plan that was

followed differed from the one I had in contemplation because the Amalgamated Company only took in those few certain interests which you have referred to; it was not until a considerable time afterward that the Butte & Boston and the Boston & Montana were acquired; not until long afterward that Senator Clark's property was acquired. If I am not mistaken, there are other properties there today, such as North Butte, and others, which have never been acquired, and have never been sought, so far as I know; they were existing mines then but have ~~never~~ been better developed since. I would have been glad to have acquired the controlling interest in all of the companies operating in Butte, but the plan did not go that far. I believe that there would be a saving of millions of dollars every year by working those properties together and cutting out unnecessary shafts, saving duplication of pumps, hoisting apparatus, and all those various mining costs. Why Mr. Rogers quit when he acquired these I am not able to tell you. I am not able to give you any more definite information in respect to his purpose and objects in the incorporation of the Amalgamated Copper Company.

Cross Examination by Mr. Garver.

So far as I know there was no discussion as to any other properties outside of Butte. The acquisition of the Michigan properties in connection with the formation of the Amalgamated Copper Company was never discussed, or of the Rio Tinto mines, or the Clark properties, then, or at any

time that I ever heard of. The Clark properties were not acquired until after the death of Mr. Rogers. My recollection is that the Heinze settlement was made before Mr. Rogers died, but not until long after the formation of the Amalgamated Copper Company. I can only state personally what I thought of the value of the Heinze properties; I did not know of any large bodies of ore, and I could get no trace of any large bodies of ore, but in his litigation he laid claim to bodies of ore which belonged to other companies; if he prevailed in that litigation, then his property would have been of value; otherwise I believed it to be of comparatively small value. When the Boston & Montana and Butte & Boston Company were taken into the Amalgamated in 1901, the capital stock of the Amalgamated was increased at that time. My recollection is not definite on whether the increased stock of the Amalgamated was offered to all the stockholders of the Butte & Boston and Boston & Montana in certain proportions; I was not here; I had nothing whatever to do with it; I was in California. I do not recall that there was a public offering at that time. We were considering the acquisition of those properties as an investment at that time largely from the economic point of view as to the operation of the properties as an entirety. Such acquisitions under a common ownership would also have eliminated the expensive litigation that at that time was affecting nearly all of the ore bodies in the Butte district.

Re-Direct Examination by Mr. Walsh.

As to the question of relationship between the properties of the Colorado Company and any of these other companies that would give rise to any apex litigation, the litigation was not confined to the question of the apex. If you remember, in the case of the Minnie Healy it was a question of ownership by an insane person. I do not recall at the moment that the Colorado was in litigation. I can instantly give you two or three reasons why there would be economy of operation observed in a common ownership between the Colorado and the balance of them. In the first place, the Colorado had a small smelter; the Anaconda had a large one. The Anaconda could add on those ores and treat them at very much less expense per ton, which in the aggregate would amount to a very large sum in the course of a year. That in itself was a very important item, and was exactly what happened. I do not recall how soon after the Colorado smelter was dismantled; the ores went to Anaconda a short time after. I don't know that Mr. Lawson and I would agree as to what his relation to the enterprise was. It is a long time ago and I think it is evident from various publications that our recollections are not quite the same. I would not want to get in conflict with Mr. Lawson in regard to that. Mr. Lawson had an interest in Butte & Boston. I saw a great deal of him in those days, and we had a number of discussions. What Mr. Lawson did with others I am not prepared to say, unless I was present. I am not able to re-

call any meeting between Mr. Lawson, Mr. Rogers and myself when these matters were under discussion. I should say there were one or two meetings, but I cannot recall them. Mr. Lawson and I did meet and confer about these matters. I should say that Mr. Lawson made a number of suggestions. I do not know that I can recall specifically what they were; he was not a director of Amalgamated; he had large interests in Butte & Boston, and I think subsequently in Boston & Montana. I do not know that I can help you very much in regard to his activities prior to and leading up to the actual incorporation of the Amalgamated. I do not recall that Mr. Lawson had anything to do with the acquisition or the purchase of the stocks which eventually went to the Amalgamated definitely. I think that Mr. Lawson made suggestions in regard to buying other properties; I think he was very anxious to have Butte & Boston and Boston & Montana. Mr. Rogers did not accept his suggestion. As I have already testified, he followed his own taste. What communication he had with Mr. Rogers without my knowledge, of course I have no information on. Mr. Lawson and I had our individual and separate interests in the Butte & Boston, and I think similar interests in two or three other companies; I do not recall any business in which we were jointly interested. The Boston & Montana and the Butte & Boston were generally known as Boston stocks; those two projects were very largely floated by Boston people I think; I think they were largely

owned by Boston people, but my recollection is that they were floated by Butte people; my recollection is that Butte and Boston was floated by Butte people, but they were largely owned in Boston, by the Davis estate. There was one other company at Lake Superior in which Mr. Lawson and I were interested, the Arcadian Mining Company, and somewhere about that time a property near Salt Lake, Utah; the mine was the Highland Boy mine, the company was the Utah Consolidated. The Arcadian was near Houghton, Michigan; the Isle Royale is there too; one is on one side of Houghton, and the other on the other. To the best of my knowledge and belief, Mr. Rogers had never heard of the copper mines at Butte up to the time he requested me to make examination of the Butte & Boston, in June, 1898; I am very sure that my recollection, from my first interview, is that he had not the slightest conception of the institution. I suppose there are a great many things that happened in which I took an active part that I cannot recall at this date, and individuals, that at the moment I do not recall. Mr. Daly and Mr. Rogers and Governor Flower are dead, and Mr. Rockefeller is in very poor health. At the moment I do not think of anyone else who would be able to tell you about the negotiations leading up to the organization. As to there having been introduced here this morning an advertisement in the Boston "Herald" of date Saturday April 29, 1899, telling of the organization of the Amalgamated Cop-

per Company, and inviting public subscription, a notice telling of the organization, signed by Mr. Daly as president and Mr. Rogers as vice-president and Mr. Rockefeller secretary and treasurer, and invitations for public subscription signed by the National City Bank, I remember there was a public offering; I do not recall the details of it. What you have just read, which is as follows:

"AMALGAMATED COPPER COMPANY.

Capital \$75,000,000.

This company is organized under the laws of the State of New Jersey for the purpose of purchasing and operating copper producing properties. Its capital is \$75,000,000, divided into 750,000 shares of common stock of the par value of \$100 each. It has no bonds or mortgages debt. This Company had already purchased large interests in the Anaconda Copper Company, Parrot Silver & Copper Company, Washoe Copper Company, Colorado Smelting & Mining Company, and other companies and properties.

Marcus Daly, President.

H. H. Rogers, Vice-President.

William G. Rockefeller, Sec't & Treas.

New York, April 28, 1899."

"OFFER FOR PUBLIC SUBSCRIPTIONS.

Referring to the foregoing statement of the Amalgamated Copper Company of New Jersey notice is hereby given that offers for subscription to 750,000 shares of the par value of \$100 each of the stock of said copper company will be received

at the National City Bank of New York until twelve o'clock noon, Thursday, May 4, 1899, at the rate of \$100 per share. Subscriptions must be addressed to the National City Bank, and accompanied by a certified check to its order for five per cent. of the amount of such subscription. The balance to be payable within ten days after date of notice of allotment. Temporary receipts on payment of sums due on allotments will be issued, exchangeable for certificates of stock as soon as same can be engraved. In case of oversubscription allotments will be made pro rata. The right is reserved, however, to reject any subscription.

NATIONAL CITY BANK OF NEW YORK,

James Stillman, President.

New York, April 28, 1899.

52 Wall Street, New York."

I have no doubt is the one; I have forgotten the wording, but I recall there being an advertisement. I do not recall who prepared that; very likely I knew at the time. I do not know by whose approval it was published. And apparently a similar advertisement was published in the New York "Herald." I do not remember at whose approval either of them was published; I do not recall that I had anything to do with it personally; I might have. In regard to the statement "This company has already purchased large interests," whether that implied that it was contemplated that other purchases would be made, I don't know that I would necessarily draw that inference. The significance I would give to the

word "chased
chased
money
the mo
not rec
was iss
quired,
will sho
through
with th
in the
large in
whethe
purcha
confor
the ext
or the
been a
think t
pectus
advisin
being
recall
compa
incline

I ne
taking
Isle R
never
I do n

rd "already" would be that they had been purchased. If the interests had already been purchased by the Amalgamated it must have had money to make the purchases; it could have got money only by subscription to its stock. I do not recall whether the records show that the stock was issued in exchange for the properties acquired, or the stock interests acquired; the records show that. I do not know who sold the stock through the National City Bank in accordance with this advertisement. The public is advised by the notice that the company has purchased the interests in Anaconda. I do not know whether the City Bank had information to furnish purchasers who went to the National City Bank conformably to this advertisement in relation to the extent of interests which had been acquired or the value of the properties whose stock had been acquired, or furnished it, or not. I do not think there was anything in the nature of a prospectus which was gotten out for the purpose of misleading the public. I do not recall anything being published except this notice, and I do not recall any being prepared, and as a director of the company I do not recall any at all. I should be inclined to think there never was any.

Re-Cross Examination by Mr. Garver.

I never discussed in any way with Mr. Rogers the Arcadian, the Utah Consolidated or the Royale property into the Amalgamated; it was never mentioned between us, or suggested. I do not recall that Mr. Lawson had anything to

do with the actual incorporation of the Amalgamated Copper Company. I think Mr. Lawson is a great advertising expert.

Re-Direct Examination by Mr. Walsh.

When I say that I do not recall that Mr. Lawson had anything at all to do with the organization of the Amalgamated, I mean the legal work of the incorporating, the organization, the charter, the by-laws, and things of that sort; he is not a lawyer.

Re-Cross Examination by Mr. Garver.

I had discussions with him about the formation of the incorporation and the properties that were to be taken in. I think I have already testified that he was very much interested in Butte & Boston, and I am not sure about Boston & Montana, but I think he wanted those taken in, and at that time Mr. Rogers was averse to taking them in.

Defendants rest.

COMPLAINANTS' REBUTTAL.

[Testimony of Walter Harvey Weed, for Complainants
(Recalled.)]

WALTER HARVEY WEED, a witness called and sworn on behalf of the complainants', testified in rebuttal in substance as follows:

I heard the testimony of the witness, Mr. Bruce, concerning the treatment to which he subjected the small quantity of pulp for the purpose of making concentrates out of it, that is 4500 gram sample. Q: What would you say as to the adequacy or conclusiveness of a test of that character, with a view to determining whether ores of the

characters spoken of could be successfully operated in a commercial way. MR. EVANS: We object: the witness has not shown himself qualified to testify to those matters, distinctly disclaiming to be a metallurgist. THE COURT: The Court will receive his testimony, but it will be, of course, weighed in the light of his former statements. Objection overruled, to which ruling of the court the defendants then and there excepted. As to the adequacy or conclusiveness of a test of that character, with a view to determining whether ores of the characters spoken of could be successfully operated in a commercial way, as a mining engineer I should regard the test as inconclusive; as a preliminary test to show what should be done in further tests, I should consider it useful. I have consulted the mine maps of the Alice Company, with a view to determining the length of drifts on the 600 level and above,—the blue print map submitted in evidence, and the only Alice map, however, I have is the one furnished in 1886 report of the Alice Company. That is the one I referred to in my testimony. I agree with Mr. Gillie that there is approximately ten miles of workings in the Alice ground. As to how much of those would be found on the 600 and above, I could not give it in percentages, but I should say roughly speaking, perhaps, one-third—one-half. I have looked at the map which I hold in my hand, the blue print introduced in evidence, and have looked over the samples as marked on the map by numbers. I measured up,

scaled this map, which is said to be on a fifty foot to the inch scale, and using that scale I find a total of 957 feet that were sampled. As representing the total length of the Alice and Magna Charta workings, or even of the Alice mine alone, I should consider it as a very small distance to sample, to estimate the true value of the ore present. I have looked over the table on the blue print, which purports to give the assay values of the ores in the samples. From the assays given there, I should say that there were two samples of absolute waste, and a number of extremely low grade samples in the list, and that at least, in my judgment, more than half of these samples would not be seriously considered by a man intending to mill the ore. In the regular course of operations the samples thus spoken of would be left as pillars in the mine, or used as waste to fill up the stopes.

Cross Examination:

As a mining engineer I consider Mr. Bruce a very able man regarding zinc operation, and you heard Mr. Bruce say that he did not despair of having a successful method of treating that ore. I do not know how much of the ten miles of workings in the Alice mine was open in 1910, or even in 1902. That would include the workings below the 1000 foot level. The only information I have regarding the 1000 foot level is from the annual report of the Alice they spoke of a large stope, 300 feet in length on the 1300 level, that ran up and down. The north vein in that property

is called the hard vein, usually alluded to as the zinc vein. I am not familiar with the stoping, but I know the 500 drift, given by Professor Blake, and the report by Professor Maynard showed that drift along the north, middle and south vein to that point, or the point separated by the clay selvage. I would hardly like to say that my map shows a comparatively small amount of development on the north vein. It showed they had cut the north vein by crosscuts. Judging simply from the map of the deeper levels, I should say they had gone down in the north vein. My recollection is that the deeper levels are on the north vein. I knew of Mr. Dwelle. I believe he is employed in a responsible capacity. I think he is dead now. I am not definite about that. I had not heard that he died in Colorado. In speaking about eliminating the ore shown in the low grade samples, that might be possible in mining operations, but you would have to know the ore body to be sure of that, but in my examination of the Butte and Superior property, that question was discussed because among the questions I was asked to determine was whether the mine had been robbed, whether in the extraction for the Basin concentrator they had taken out the crystalline ore and left this dense zincy ore behind. Therefore, I assumed that in mining operations, if your samples cover considerable space of ground of good ore, and the low grade samples covered hard ore, you would leave it as pillars. The ore of the payable grade would be mined if it

could be, and you would not take out the waste unless you had to. In sampling a mine thoroughly, such workings as are open, particularly in that zincy ore, a miner cannot tell at all times if he is taking the good ore. He can tell pretty nearly what he is taking, but an engineer in the beginning wants to take pretty near everything to find out what the conditions are.

(Witness excused.)

Both Rest.

(All maps introduced in evidence in this case, as original exhibits, are to be sent to the Circuit Court of Appeals as original exhibits, and for that reason do not appear in this statement.)

That after the submission of the foregoing evidence and the entry of the decree herein on July 2, 1915, to-wit, on January 31, 1916, a hearing was had upon the question of the allowance of attorneys fees to the complainants, and thereupon, by consent of counsel, the following memorandum of the services performed by the solicitors for the complainants was submitted, to-wit:

**[Memorandum of Services Performed by the Solicitors for
the Complainants.]**

"In this case, the action was commenced in November, 1911. About two weeks' time was consumed in collecting data preliminary to the filing of the complaint as to the organization of the defendant companies and as to the relation which they bore to each other. Aside from the time thus consumed in collecting data, about a

week's time was consumed in investigating the law which would permit the institution of the action and as to how service could be obtained upon the defendants and as to whether the Amalgamated Copper Company should be a party to the action. Demurrer and motions were afterwards interposed, although no considerable time was required in getting them out of the way.

An injunction pendente lite was applied for to restrain the disposition by the Alice Company of the stock, and a hearing was had and evidence introduced, which consumed about a week's time. Upon this hearing, the law of the case was thoroughly exploited and exhaustive briefs were prepared, which consumed probably a week's time. In the work of preparation for the final trial and as to the evidence that could be obtained, trip was made by Mr. Walsh from Washington to New York and Boston to gather data as to the organization of the Amalgamated Copper Company, which consumed two or three days. The deposition of Mr. Ryan was taken in New York, and in order to take this deposition it was necessary for Mr. Nolan to make a trip from Helena to New York and a trip was made by Mr. Walsh from Washington to New York, and to do this, Mr. Nolan was absent from the office about ten days. Depositions were afterwards taken in Boston and New York, which took about four days. These depositions were all used upon the final trial. Then came the final trial of the case and about a week was consumed in consulting with expert witnesses who testified

in the case, going over the entire field of their evidence, and the trial itself which consumed about seven days. After the trial briefs were prepared, the exhaustiveness of which the court is advised."

[Order Approving, etc., Statement of Evidence.]

CERTIFICATE OF APPROVAL OF STATEMENT
OF EVIDENCE.

THE FOREGOING STATEMENT of the evidence in the case of PETER GEDDES, et al., Complainants, vs. ANACONDA COPPER MINING COMPANY, et al., Defendants, pending in the District Court of the United States for the District of Montana, is, within the time allowed by law, and the rules of Court, approved as a true, complete, correct and properly prepared statement of all of the evidence offered and introduced upon the trial and hearing of said case, including all exhibits, excepting maps, the originals of which the clerk is directed to transmit to the Clerk of the Circuit Court of Appeals, for use in that Court as original exhibits.

Dated this 16 day of Feb., 1916.

, GEO. M. BOURQUIN,
Judge of the District Court of the United States,
for the District of Montana.

[Filed Feb. 16, 1916. Geo. W. Sproule, Clerk.]

[Certificate of Clerk United States District Court to
Transcript of Record.]

UNITED STATES OF AMERICA,
District of Montana, ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing transcript on appeal, consisting of 984 pages numbered consecutively from 1 to 984 inclusive, is a full, true and correct transcript (formal parts only omitted) of the pleadings, decrees and all other records and files in said cause mentioned in the praecipes for transcript herein, as appears from the original records and files in said court in my custody as such clerk.

AND I DO FURTHER CERTIFY and RETURN that I have annexed to said transcript and included within said paging the original citations issued in said cause.

I FURTHER CERTIFY That all original maps and exhibits mentioned in the stipulation and order therefor are transmitted herewith.

I FURTHER CERTIFY That the costs of the transcript of record amount to the sum of four hundred forty-four 75/100 dollars (\$444.75) and have been paid by the appellants.

IN WITNESS WHEREOF, I have hereunto set

986

Peter Geddes et al. vs.

my hand and affixed the seal of this court the
15th day of July, in the year 1916.

GEO. W. SPROULE,

Clerk of the District Court of the United States,
in and for the District of Montana.

[SEAL]

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Baecho, Co-Partners, Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD and Silver Mining Company, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

Upon Appeal from the United States District Court for the District of Montana.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Monday, the twelfth day of March, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable William B. Gilbert, Senior Circuit Judge, Presiding; Honorable Erskine M. Ross, Circuit Judge; and Honorable Charles E. Wolverton, District Judge.

No. 2831.

PETER GEDDES et al., Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, et al., Appellees.

Order of Submission.

Ordered, appeals in the above entitled cause argued by Mr. T. J. Walsh, counsel for the appellants, and by Messrs. L. O. Evans and W. B. Rodgers, counsel for the appellees, and submitted to the Court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit.

At a stated term, to wit, the October term, A. D. 1917, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Monday, the first day of October, in the year of our Lord one thousand nine hundred and seventeen.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge, Presiding.

The Honorable Erskine M. Ross, Circuit Judge.

The Honorable William H. Hunt, Circuit Judge.

No. 2831.

PETER GEDDES et al., Appellants,

VS.

ANACONDA COPPER MINING COMPANY, a Corporation, et al.,
Appellees.

*Order Directing Filing of Opinion and Dissenting Opinion and
Filing and Recording of Decree.*

By direction of the Honorable William B. Gilbert, Circuit Judge and Honorable Charles E. Wolverton, District Judge, before whom, together with the Honorable Erskine M. Ross, Circuit Judge, the cause was heard, ordered that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the clerk, and that a Decree be filed and recorded in the Minutes of this Court in said cause, in accordance with said opinion.

By direction of the Honorable Erskine M. Ross, Circuit Judge, ordered that the Dissenting Opinion written by him and this day rendered in said cause be forthwith filed by the clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GREGGS et al., Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, et al.,
Appellees.

(Opinion U. S. Circuit Court of Appeals.)

GILBERT, *Circuit Judge*, with whom concurs
WOLVERTON, *District Judge*:

We concur in the opinion of Judge ROSS, except in his conclusion that the sale to the Anaconda Company should be annulled.

It cannot be denied that the majority of the stockholders of the Alice Company had the right to sell the corporate property. After the sale, and at a meeting regularly called and held under the authority of the laws of Utah, the requisite number of the stockholders passed a resolution directing that the corporation be dissolved, its affairs wound up, and its assets distributed. The appellants had no power to prevent dissolution against the will of the majority. Nor had they the right to say that a sale should not be made to the Anaconda Company, if that company outbid others. They had, however, the right, and that right the court below secured to them, to have the property sold free from the effect of any unfair combination between the majority stockholders and the Anaconda Company. The Court below followed the rule of *Mason v. Pewabic Mining Company*, 133 U. S. 50, which holds that any stockholder can require that upon dissolution the corporate property shall be sold to the highest bidder for cash, and not to another corporation in which the majority stockholders are interested, and on terms fixed by them. There is no essential difference in principle between that case and this, and no substantial difference in the facts. The only difference is that in the *Pewabic* case the minority stockholders were in court insisting on their right to a sale at public auction, while in the case at bar the minority assert that no sale whatever should be made. Upon the law and the facts they are in no position to prevent a sale, nor to thwart the purpose of the majority to sell to another corporation. When they subscribed to their stock, they assented to the laws of Utah governing the distribution of assets of corporations, and they must abide by them. Nor is any relevant distinction to be found in the fact, as asserted, that in the *Pewabic* case the corporation had ceased to exist, while in the present case the corporation was still in existence. It is true that the charter of the *Pewabic Mining Company* had expired, but under the laws of Michigan it continued to be a body corporate, for all purposes except that of continuing in business, and among the per-

missible functions of its continued existence as prescribed by law was that of winding up its affairs, disposing of its property and dividing its capital stock. In 10 Cyc, 1302, it is said: "So if, in the exercise of a sound discretion the majority of the shareholders deem it expedient to do so, they may sell out the whole property of the corporation to a new corporation, taking payment in its shares, to be distributed among such of the old shareholders as may be willing to take them. * * * If it is conceded that such action on the part of the majority is lawful, then the principle follows that the judicial courts will not examine into the affairs of the corporation for the purpose of determining whether the action is expedient, or for the purpose of scanning the motives which have led to it." In *J. H. Lane & Co. v. Maple Cotton Mills Co.*, 226 Fed. 692, the Circuit Court of Appeals for the Fourth Circuit said: "The courts cannot pass upon the question of expediency of dissolution and sale, for that is the very question which the Legislature has authorized the majority of the stockholders to decide. * * * The courts cannot say that the discretionary power of the majority conferred by the statute does not extend to the dissolution of a prosperous corporation, or to a dissolution which will probably result in practical consolidation by the purchase of the property by another corporation. The fact that the state has not provided for consolidation without a dissolution of the corporation and sale of the property by no means implies that there is any policy of the state against dissolution and sale resulting in consolidation." The majority of the stockholders have rights which the court must recognize and protect. They have the right to retain the benefit of the sale already made unless a sale for a higher price can be made. This was the protection afforded the majority stockholders in the *Pewabic* case, and it is here afforded by the decree of the court below.

The decree is affirmed.

[Endorsed:] Opinion. Filed Oct. 1, 1917 F. D. Monekton, Clerk, by Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Isador Baer, Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD and Silver Mining Company, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

Upon Appeal from the United States District Court for the District of Montana.

Before Gilbert and Ross, Circuit Judges, and Wolverton, District Judge.

Ross, *Circuit Judge*:

This suit was brought by certain minority stockholders of the appellant Alice Gold and Silver Mining Company, a corporation organized in 1881 under the laws of the then Territory of Utah, to procure a decree annulling a deed of all of its property to the appellee Anaconda Copper Mining Company, a corporation, made in consideration of a transfer of 30,000 shares of the capital stock of the latter company to the Alice Company—the grounds upon which the relief is sought being, first, that neither the board of directors nor a majority of the stockholders of the Alice company was authorized to sell or dispose of all of its property against the protest of any of its stockholders; second, that the Alice company had no authority to acquire the stock of the Anaconda Copper Mining Company; third, that the parties who negotiated and carried out the sale and the parties who negotiated and carried out the purchase were substantially the same, all being controlled by John D. Ryan, who was at the time a director of both companies and the president of the Alice Company, and that the consideration upon which the transaction was based was inadequate; fourth, that the purpose with which the purchase was made was to monopolize the production of copper in the Butte District of Montana, where the property is situated, and the sale of the same in the markets of the world, in violation of the Federal Anti-Trust Act known as the Sherman Act.

While the last point mentioned has been very ably and elaborately argued by counsel on both sides we find it unnecessary to consider it for the reason that as we understand the recent decision of the Supreme Court in the case of Wilder Manufacturing Company

vs. Corn Products Refining Company, 236 U. S. 165, it is not available to the appellants.

That case involved the construction of the Anti-Trust Act and the effect of a profit-sharing contract of the Refining Company and those dealing with it exclusively, and the right of that corporation to recover for goods sold by it to the Manufacturing Company. The court, in denying the defense interposed by the purchaser based upon the claim that the Refining Company had no legal existence as it was a combination composed of all the manufacturers of glucose or corn syrup in the United States, illegally organized with the object of monopolizing all dealings in such products, in violation of the Anti-Trust Act of Congress, and had further sought to perpetuate its monopoly by devising a certain profit-sharing scheme, based its ruling upon two grounds, the second of which is as follows:

"In the second place, that the proposition is repugnant to the Anti-Trust Act. Beyond question re-expressing what was ancient or existing and embodying that which it was deemed wise to newly enact, the Anti-Trust Act was intended in the most comprehensive way to provide against combinations or conspiracies in restraint of trade or commerce, the monopolization of trade or commerce or attempts to monopolize the same. *Standard Oil Co. v. United States*, 221 U. S. 1; *United States v. American Tobacco Co.*, 221 U. S. 106. In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions. Thus the statute expressly cast upon the Attorney-General of the United States the responsibility of enforcing its provisions, making it the duty of the district attorneys of the United States in their respective districts under his authority and direction to act concerning any violations of the law. And in addition, evidently contemplating that the official unity of initiative which was thus created to give effect to the statute required a like unity of judicial authority, the statute in express terms vested the Circuit Court of the United States with 'jurisdiction to prevent and restrain violations of this act,' and besides expressly conferred the amplest discretion in such courts to join such parties as might be deemed necessary and to exert such remedies as would fully accomplish the purposes intended. Act of July 2, 1890, c. 647, 26 Stat. 209. It is true that there are no words of express exclusion of the right of individuals to act in the enforcement of the statute or of courts generally to entertain complaints on that subject. But it is evident that such exclusion must be implied for a two-fold reason: First, because of the familiar doctrine that 'where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes.' *Farmers' & Mechanics' National Bank v. Dear-*

ing, 91 U. S. 29, 35; *Barnet v. National Bank*, 98 U. S. 555; *Oates v. National Bank*, 100 U. S. 239; *Stephens v. Monongahela Bank*, 111 U. S. 197; *Tenn. Coal Co. v. George*, 233 U. S. 354, 359; second, because of the destruction of the powers conferred by the statute and the frustration of the remedies which it creates which would obviously result from admitting the right of an individual as a means of defense to a suit brought against him on his individual and otherwise inherently legal contract to assert that the corporation or combination suing, had no legal existence in contemplation of the Anti-Trust Act. This is apparent since the power given by the statute to the Attorney General is inconsistent with the existence of the right of an individual to independently act since the purpose of the statute was where a combination or organization was found to be illegally existing to put an end to such illegal existence for all purposes and thus protect the whole public—an object incompatible with the thought that such a corporation should be treated as legally existing for the purpose of parting with its property by means of a contract of sale and yet be held to be civilly dead for the purpose of recovering the price of such sale and then by a failure to provide against its future exertion of power be recognized as virtually resurrected and in possession of authority to violate the law. And in a two-fold sense these considerations so clearly demonstrate the conflict between the statute and the right now asserted under it as to render it unnecessary to pursue that subject further. In the first place because they show in addition how completely the right claimed would defeat the jurisdiction conferred by the statute on the courts of the United States,—a jurisdiction evidently given, as we have seen, for the purpose of making the relief to be afforded by a finding of illegal existence as broad as would be the necessities resulting from such finding. In the second place because the possibility of the wrong to be brought about by allowing the property to be obtained under a contract of sale without enforcing the duty to pay for it, not upon the ground of the illegality of the contract of sale but of the illegal organization of the seller, additionally points to the causes which may have operated to confine the right to question the legal existence of a corporation or combination to public authority sanctioned by the sense of public responsibility and not to leave it to individual action prompted it may be by purely selfish motives. As from these considerations it results not only that there is no support afforded to the proposition that the Anti-Trust Act authorizes the direct or indirect suggestion of the illegal existence of a corporation as a means of defense to a suit brought by such corporation on an otherwise inherently legal and enforceable contract, but on the contrary that the provisions of the act add cogency to the principles of general law on the subject and therefore make more imperative the duty not directly or indirectly to permit such a defense to a suit to enforce such a contract, we put that subject out of view and come to the only remaining inquiry, the alleged effect of the previous ruling in the *Continental Wall Paper Case*, *supra*."

So far as the point above alluded to is concerned, the only dif-

ference between the case cited and this is that in that case a private corporation undertook to avoid the payment of money due from it under a contract with another private corporation on the ground that the latter was an illegal monopoly and therefore had not the power to make the contract because of the Anti-Trust Act, while here the contention is that the Copper Company was without power to make a certain purchase from another private corporation because of the same Act—which is, in principle, as we conceive, no difference at all.

The articles of incorporation of the Alice Company define its powers as follows:

"The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, mill sites, furnaces and reduction and refining works, to buy, sell, and exchange mineral ores and bullion; to buy, lease, construct and operate roads, tramways, and freight and transportation routes, to facilitate the business of the company; to appropriate, buy and sell water, water rights and ways for conducting the same, and generally, to do all kinds of business incident to, connected with, or convenient to the management of a general mining business, in the Territories of Utah, Montana, Idaho, and in any State or Territory of the United States."

The record shows that the property consisted of about 140 acres of mining ground on the hill north of the city of Butte, and is contiguous to some of the properties of the Anaconda Company; that through it runs for more than three-quarters of a mile a great silver bearing lode called the Rainbow Lode, carrying some gold, upon which lode the company commenced work about 1881, sinking a shaft 1500 feet, and running drifts of the aggregate length of about ten miles, and from which lode it extracted a large amount of ore, out of which it paid its stockholders, commencing March 15, 1881, and ending April 27, 1898, \$1,075,000—there having, however, been no dividends paid between November 25, 1891, and December 31, 1896. While that work, according to the evidence, disclosed very large bodies of zinc-lead ore, it left available no more silver ore. The zinc-lead ore being peculiarly refractory, and there not being then, nor yet, according to the evidence, any known process by which it could be worked at a profit, and the silver ore being the only kind in the mine then, or yet, according to the evidence, known that could or can be worked at a profit, work upon the mine by the company was suspended prior to 1894. From time to time thereafter it was worked in a small way under leases—the company receiving a royalty on such ore as the lessees were able to work. Water was allowed to raise in the mine first to the 1000 and afterwards to the 700 foot level, when, about 1899, the mill which was upon one of the claims was closed and the company ceased operations. In 1902 the shaft house burned, but the company erected a new hoist by which the lessees, also called in the record "tributors", could hoist the ore they desired to take out. While the leases were in operation the royalties received by the company were insufficient to meet the necessary expenditures for insurance, taxes, and watch-

ing the property; and also proving unprofitable to the lessees, the leases were abandoned and all work ceased. The indebtedness of the company of course gradually increased, and at the time of the sale in question amounted to \$34,101.56, of which \$19,575.23 was incurred in the construction of the new hoist to take the place of the one destroyed by fire.

At one time during the period that the property was dormant the stock of the Alice Company—incorporated with 400,000 shares of the par value of \$25.00 each—sold as low as 12 cents a share, and for years was depressed to a very low point. But in 1905 John D. Ryan secured from the holders thereof an option on a majority of the stock at \$1.50 a share, being on the basis of \$600,000.00 for the whole property, and in February of the same year made the purchase pursuant to the option.

These further facts appearing in the record and succinctly stated by counsel, should be mentioned: Prior to the year 1899 a number of independent companies were engaged in mining and smelting copper ore in and near Butte, among them the appellee Anaconda Copper Mining Company, the Washoe Copper Company, the Parrot Silver & Copper Mining Company, the Colorado Mining & Smelting Company, the Boston & Montana Consolidated Copper & Silver Mining Company, and the Butte & Boston Consolidated Mining Company, all of which were large producers of that metal. In the year mentioned the Amalgamated Copper Company was organized as a holding company with a capital stock of \$75,000,000.00, and it acquired a majority of the stock of the Anaconda and Parrot companies, and all of the stock of the Washoe and the Colorado companies, and by 1901 it had acquired a majority of the stock of the Boston & Montana and of the Butte & Boston companies, increasing its capital stock to make these latter purchases from \$75,000,000 to \$155,000,000—leaving of the then large copper producing companies in the Butte field only those controlled by F. Augustus Heinze and those owned by W. A. Clark.

At the time of the formation of the Amalgamated Company there was in progress between Heinze and his companies on the one side, and the Boston & Montana and the Butte & Boston on the other much bitter and costly litigation, which, as soon as the last named companies became allied with the Amalgamated, involved the latter and all of its constituent companies. In 1905 and 1906 negotiations were entered into between Ryan, the president of the Anaconda and a director of the Amalgamated company, and Thomas F. Cole, on the one side, and Heinze, on the other, for the settlement of all of the litigation and adverse claims referred to, which negotiations resulted in a final settlement by which Heinze was paid \$10,500,000 in cash, in consideration of which all of the properties with which he was associated at Butte were transferred to a corporation organized by Ryan and his associates to take them over, known as the Red Metal Mining Company, all of the stock of which (having a par value of \$11,000,000) was immediately acquired by another corporation organized by the same interests to

hold it, with a capital stock of \$15,000,000, called the Butte Coalition Company, consisting of 1,000,000 shares.

It was while these negotiations were going on that Ryan acquired under the option that has been mentioned a majority of the stock of the Alice Gold & Silver Mining Company, which he subsequently turned over to the Butte Coalition Company.

Of the Red Metal Company, Thomas F. Cole was president, W. O. Thornton was vice-president, and J. C. Lalor, C. D. Fraser, and James O'Grady were also directors.

Of the Butte Coalition Company Cole was president, Ryan vice president, and Urban H. Broughton, James Hoatson, Chester Congdon, B. B. Thayer, F. L. Ames, William B. Dickson, and A. C. Carson also directors, Thayer also being then president of the Amalgamated Company.

About the same time Ryan and his associates also acquired for the same interests all of the properties of Clark except his Poser and Elm Orlu claims, which latter two claims were located on the Rainbow Lode, and not far from the properties of the Alice Company, from both of which claims more or less copper ore has been shipped.

The record also shows that a considerable quantity of copper ore has been found in a property at the easterly end of the Rainbow Lode owned by the Butte-Superior Company, which lode had, until these and perhaps other recent discoveries, always been regarded in the Butte district as a silver bearing lode only.

Very naturally, the discovery of copper ore in commercial quantities in portions of the Rainbow Lode is a reasonable basis for at least hope, and possibly, of just expectations that like ore may be found upon further exploration in the extensive properties on the same lode of the Alice company—especially when the various other veins that the evidence shows exist on those properties and cross its portions of the Rainbow Lode are considered, together with the known extent and huge production of copper ore in the district. At all events, that prospect, as shown by the record, entered into the estimates of the value of the Alice properties made by the experts on behalf of the appellants, they testifying that the finding of copper ore therein is a geological probability, which probability, as well as their estimates as to values, however, differed very widely from those fixed by similar witnesses of the appellees, who characterized the chance of finding copper ore in the properties of the Alice Company as a geological possibility—the value of the properties, according to the estimates of the former, being from three to five millions of dollars, whereas, according to the opinions of the witnesses on behalf of the appellees, they brought by the sale all that they were at the time worth.

The 30,000 shares of the stock of the Anaconda Copper Mining Company for which the properties of the Alice company were sold by its board of directors are claimed by the appellees to have been worth at the time \$1,500,000.00 and are conceded by the appellants to have been then worth \$1,250,000.00, while their then value was found by the court below to have been \$1,500,000.00 plus the amount of the indebtedness of the Alice company, the aggregate

amount of which consideration the court further found was inadequate.

With that finding we are of the opinion that, upon the record, we would not be justified in interfering. Taking such to be the fact, we are, therefore, to consider and determine whether the judgment appealed from can be sustained—which judgment adjudged and decreed the sale in question in all respects valid and binding and the title to all of the properties of the Alice company to have passed thereby to the Anaconda Copper Mining Company, there having been shown to the court to have been no bidder at the offer of all of the said properties at a public sale upon notice published in accordance with a preceding interlocutory decree of the court.

We are unable to agree to the contention on the part of the appellants that the properties of the Alice company in the condition they were at the time of the sale, and for years theretofore had been, could not be legally sold and conveyed by the directors of the company without the consent of all of its stockholders. We quite agree that the company cannot be regarded as then insolvent, for it owed but \$34,101.56, payment of which, so far as appears, was not even being asked, much less urged (by the Butte Coalition Company, which it appears was the creditor), and owned properties for which the Anaconda Copper Mining Company was willing to pay the equivalent of over one and one-half millions of dollars. At the same time, all of the ore the properties were known to contain that could be worked at a profit had been extracted and disposed of many years before, and the development of other ore therein of commercial value, should such exist, necessarily involved the risking of a large amount of money. The Anaconda company, no doubt, could afford to take that risk—especially as the evidence shows that the exploration and development of the Alice properties could be made from the workings of some of its own properties—and it is reasonable to suppose that it had sufficient information to justify it in undertaking to do so. But the Alice company not only had no money with which to make such explorations and development, but was in debt, which indebtedness was necessarily gradually increasing. Its stock was non-assessable and therefore its stockholders could not be made to furnish the money essential to any further exploration of its properties. In the course of his testimony Ryan, the president of the company, said, among other things:

"There had been no operations on the Alice properties, excepting leases since 1893. After the Butte Coalition Company acquired control of the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct company operation, except taken care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs, we could not see where we

were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations."

The fact that the Butte Coalition Company owned 234,000 of the 400,000 shares into which the capital stock of the Alice company was divided, which 234,000 shares were acquired by the former company from Ryan, and that he acquired them in large part from men also of large means, and that either or all of such owners might themselves have furnished or secured the money necessary for the further development of the properties, is, in our opinion, wholly unimportant. Conceding their ability to have done so, they were not obliged by any rule of law or equity to do it.

The circumstances under which private corporations may sell and dispose by absolute conveyance of all of their property are thus stated in Thompson on Corporations:

"First: Private corporations, when expressly authorized by statute, charter, or by-laws, may sell and dispose of all the corporate property;

"Second: Private corporations, by the unanimous consent of all stockholders, in the absence of express prohibition, may sell and dispose of all corporate property;

"Third: The directors and managing officers have the power to dispose of all the property where the governing statute provides that private corporations may sell their entire property;

"Fourth: Where the corporation is in failing circumstances, or is in fact insolvent, the directors and managing officers may dispose of all the property, or make an assignment of all the corporate property for the benefit of creditors;

"Fifth: The majority stockholders may alienate all the corporate property when expressly authorized by statute, charter, or by-laws;

"Sixth: The majority stockholders, even as against the protest of the minority, may dispose of all the property when the corporate business has become unprofitable, and where it would be ruinous to the corporation and the stockholders to continue the business; or where there are insufficient funds to continue the business and no money with which to pay existing indebtedness; or when the corporation is in failing circumstances, or is in fact insolvent." (Sec. 2429, 2nd Ed.)

The purposes and powers of the Alice company as expressly stated in its Articles of Incorporation have already been set out.

By a statute of Utah enacted in 1905, after conferring certain powers on the corporations of the state, it is further provided:

"And any corporation now existing or that hereafter may be organized under the laws of this state for the purpose of mining, or the exploration or development of mining property, including land bearing metal, stones, lime-stone, oil, petroleum, asphalt, and other

hydro-carbons, shall, in addition to the powers above enumerated, have the power to purchase, take on bond, or lease or in exchange, or locate, or otherwise acquire, any lands, mines, options, territory, fields or claims, and to sell, convey, lease, bond, mortgage, dispose of, or otherwise deal in the same to such extent as the board of directors may deem prudent, subject always to the provisions of the articles of incorporation and by-laws; Provided, that in case the articles of incorporation do not provide for the sale or other disposition of the property of the corporation, then the act of the board of directors shall not be valid or binding on the corporation until confirmed by a vote of the majority in amount of the stock outstanding, at a meeting of the stockholders duly called to consider such action of the board. When the articles of association provide that the property of the corporation may be sold, mortgaged, or otherwise disposed of by the directors or by the stockholders, sales made in accordance therewith shall be binding on the company." (Sec. 322. Compiled Statutes, 1907.)

The board of directors of a private corporation was by the common law authorized to sell or otherwise dispose of the property of the corporation, subject to the limitation that it could not sell or dispose of its entire property. (*Forrester v. B. & M. Co.*, 21 Mont. 544; *Thompson's Com. or Corp.*, 2421, Vol. III; *idem*, Vol. VII, 8356; *Noyes on Intercorporate Relations*, Secs. 114, 281.)

By the Utah statute referred to, the powers of all such corporations then existing or that should thereafter be organized under the laws of the state for any of the purposes therein enumerated were manifestly extended beyond the common law powers, and under its express terms, in view of the charter of the Alice company, we do not think it admits of doubt that the board of directors of the latter company, in the absence of any fraud or lack of good faith, and with the consent of the majority of its stockholders, was empowered to sell and dispose of all of the property of that corporation.

It is true that at the time the Alice company was incorporated the above-quoted provision of the Utah statute had not been enacted, but there was then in force a statutory provision of the territory authorizing the amendment, alteration, or repeal of the statute under which the company was incorporated (*Comp. Laws of Utah*, 1876, p. 232), which power was subsequently made a part of the fundamental law of the state (Sec. 1, of Art. XII of the Constitution).

Such reserved power, it was held by the Supreme Court of the state in the case of *Garvey v. St. Joe Mining Co.*, (91 Pac. 369,) does not extend to an agreement which the statute had permitted the stockholders of a corporation it had authorized to be incorporated to make among themselves, that its stock should be paid for in full and thereafter be non-assessable. But there was no agreement of that nature in the articles of incorporation of the Alice company; by which, as has been seen, the corporation was given the general power to buy, lease, hold, own, operate, and sell, mines, mining claims, mills, mill-sites, reduction and refining works, and to do all kinds of business incident to, connected with, or convenient for the management of a general mining business.

There is in the powers thus conferred by its charter on the Alice company no express prohibition against the sale of all of the property of the corporation, nor is there in the case any express agreement either between the corporation and its stockholders, or between the stockholders themselves, that such a conveyance should not be made—the most that can be claimed in that regard being that a conveyance of all of the property of the corporation might terminate the business of the company and thus defeat the objects of its incorporation; but not necessarily so, for, as said by the Supreme Court of Montana in *Forrester v. B. & M. Co.*, *supra*, (21 Mont. 544, 559:

"A transfer or other disposition of all its property will not *ipso facto* dissolve a corporation, although the practical effect thereof may be to defeat the object of its organization. This is so because ownership or possession of property is not essential to corporate existence. (*Gans v. Switzer*, 9 Mont. 408, 24 Pac. 18; 9 Am. & Eng. Ency. Law (2d Ed.) 505.) A flourishing mining corporation may desire to sell or otherwise dispose of its entire assets for the purpose of reinvesting the proceeds in a new enterprise within the corporate purposes, or of acquiring other mining property. Such sale or other disposition might be made at common law with the unanimous consent of the stockholders, without working a dissolution; nor would a dissolution be produced by the sale or assignment of the whole property of an insolvent corporation made by the directors—either with or without the consent thereto of all the stockholders therein."

In *Thompson on Corporations*, Sec. 90, it is said:

"The reserve power of the Legislature extends not only to altering the charter for any purpose connected with the public interests, but also to altering it for the mere purpose of changing the rights of the corporators as among themselves. This view has been taken in New York, in Massachusetts, in Illinois, in Missouri, and in other states. A necessary result of this doctrine is that the Legislature may authorize any change in the organization, purposes, or powers of the corporations which the majority might desire, contrary to the will of the minority."

Upon that subject there is more or less conflict in the decisions of the courts, but we find it unnecessary to pursue or decide the question in this case, for the reasons already suggested.

In the instant case the sale was made in exchange for stock in another corporation, with the intention by the board of directors of the Alice company, as is claimed on behalf of the appellees, to thereafter apportion the stock so acquired among the stockholders of the company, or its cash value to such of them as preferred cash, and thereafter to wind up its business and disincorporate the company.

The appellees dispute both the validity of the exchange and the intent with which it was made, but we find it unnecessary to decide either of those questions, because of the views we entertain regarding the two remaining points presented by the record.

It appears that Ryan was a director and the president of the

Alice company, the managing director of the Anaconda Company, a director and the president of the Amalgamated company, and a director and the president of the Butte Coalition Company; that Thayer was the director and the president of the Anaconda company, and a director of the Butte Coalition Company, while the latter company owned a large majority of the stock of the Alice company, and 500,000 shares of the stock of the Anaconda company. And although the trial court acquitted both Ryan and Thayer of any intentional wrong, saying in its opinion that it saw nothing to "inspire belief that they aimed at aught but fair bargaining, or that they designed injury to Alice and consciously abused their trust," yet said that though the common directors were not a majority of either board, it "is a difference in degree but not in principle. They may have dominated the board. In both cases is divided duty conflicting interests, possible impaired judgment of unknown effect, difficulty of proof, and danger to stockholders. In either case inadequacy of price is unfairness and condemns without further inquiry in an attempt to determine whether due to corruption or honest but mistaken judgment unconsciously swayed by adverse interest. There is no safety otherwise."

At the beginning of the suit Judge Hunt, in granting an injunction pending the litigation restraining the disposition by the Alice company of the 30,000 shares of the stock of the Anaconda company, held upon the showing then made that Ryan as managing director of the Anaconda company "must have had some specific, detailed knowledge of ore bodies in the Alice, their extent, character, and value, which would warrant the payment of \$1,300,000 for the property, is an irresistible inference. We all know that the science of mining has been so far advanced within the last fifteen years that it enables engineers to express clear and definite opinion of mine values. Mere chances have given way to highly reasonable expectations based upon exploitation, study of geological conditions, assays, mineralogy and improved commercial facilities for reducing ores;" and further held (and, as we think, very correctly) that upon principle contracts between corporations having a common director should be regarded very much as are contracts between individual directors and their corporations, and that while such contracts are not prohibited and are not *prima facie* void or fraudulent, they are voidable and that the burden rests upon those who seek to sustain them to show clearly and satisfactorily that they are entirely fair and free from wrong—citing with approval what is said upon the subject in II Thompson on Corporations, Secs. 1242 and 1243.

The trial court held that by the evidence given that burden was not sustained, with which conclusion we agree, not only because of the inadequacy of the consideration but because it appears in part from Ryan's own testimony that all of the knowledge respecting the Alice properties within the possession of the buying corporation of which he was managing director was not communicated to the stockholders of the Alice company, of which he was likewise a di-

rector and also its president, and whose directors it is manifest from the whole record he dominated.

From his testimony we extract as follows:

"The price was fixed by general conference,—in the matter of the Alice Company the price was fixed more or less arbitrarily. There was nothing in the value of the mines, there was nothing demonstrated that anybody could fix any value on. It was matter of trade between the representatives of both companies. Of course, when I closed out with Mr. Heinze I was on one side doing the best I could for the Amalgamated and Mr. Heinze was doing the best he could for his company. When we traded with Clark, Mr. Clark was looking after the interests of his company and I was looking after the interest of the Anaconda and the Amalgamated Company. The Alice Company appointed a committee to confer with a committee representing the other companies. I think the Board of Directors appointed the committee and I was president of the Board at the time. I don't remember who the members of the committee were. My associates upon the Board representing the Alice negotiations were Mr. Carson and Mr. Thornton. They were the two that I relied on more than anybody else in the Alice Company. They were not connected with the Anaconda or with any of the other Amalgamated companies, but they were directors of the Alice, both men of very good knowledge of the Butte Camp and its history, and as good a knowledge as anybody had of the Alice Company. Mr. Carson was manager of the Lexington mills, the adjoining property to the Alice, for years when it was in operation, and just before it closed, and probably had as intimate knowledge of that important district and Lexington districts as anybody who was then living. I don't recall who represented the Anaconda Company. There were committees representing the different companies that were in negotiation for the purchase on the part of the Anaconda Company and for the sale on the part of the other companies. I don't know that Mr. Thornton, Mr. Carson and myself agreed readily upon the price, but I don't recall any dispute. In reality the price was arbitrarily fixed. It had to be. It could not be otherwise. The price was not fixed by me. Neither the price on that or any of the other properties. I was very careful to see it was not. I realized that just such a question as this would be asked. I don't know that I would have so little common sense as to order on the part of the Alice Company prior to the sale of the Anaconda an investigation to be made by anybody to ascertain the then value of the Alice property. The Alice had no value except as to its mine. The whole matter of the value of the Alice mine was discussed pro and con at the time I took that option and as I say all the talent in our organization was criticizing me for taking that option. Nothing had developed after that time up to the time of the transfers of these properties to the Anaconda Company in the Alice mine or on the Alice mine property that was worthy of investigation. We all knew the development of the adjacent property in a way, and enough to guide us in our judgment as to the effect of that value on the Alice company. The committee that were looking after the

Alice end of the trade certainly satisfied themselves what they thought was a reasonable value for the property and made investigations accordingly I have no doubt. All of the committees representing all the companies did that; that being a part of the arrangements. . . . I produced the statement which you requested—complainants' exhibit 'A' October 7, 1913, showing the production of copper, silver and gold of the Badger State mine since the commencement of operations on that property to June 30, of this year. At the present time the lowest level in the Badger State mine is approximately two thousand feet in depth. The extraction of ore in commercial quantities began, I think, at about twelve hundred feet. That vein is probably a continuation of the Jessie vein (one of the veins that crossed the property of the Alice company). I think there was a lean zone in the North Butte property at about that depth, but the Jessie was worked and produced ore practically from the surface, not in the same high grade bodies that were encountered from about nine hundred down. I think the two thousand and twenty-two hundred feet levels in the North Butte—by common repute,—I have never seen them myself are not as good levels as above and below. I can tell you from my mine report that I have here the distances east and west of the working shaft of the Badger State that the developments have extended. On the two thousand foot levels the workings extend easterly seventy-four feet and westerly sixty-nine feet from the cross-cut. I cannot find any report of Professor Kemp and Mr. Keller and Mr. Klepetko bearing particularly on the Alice property. I am quite sure that they did not make a written report particularly on that property, because they were employed by the different companies in the Anaconda consolidation to value plants, to inspect workings, and to generally pass upon the value of operating properties, which of course was impossible in the case of the Alice, as there was no plant and the workings were not accessible on account of the mine being filled up with water, up to about the 700 foot level. So far as the Alice company is concerned, there was no written report from any engineer on the property preparatory to or anticipatory of the sale. Mr. Thornton and Mr. Carson both of whom are engineers with considerable experience in the valuation of mining properties, particularly in Butte, were directors of the Alice company, and conferred with me as president of the company and very largely determined the value of the property for the purposes of the trade. Professor Kemp did not make any report to the Alice company. Of that I am certain. The circular to the stockholders issued by the Directors was all the information the Directors or anybody else had, and was sent to the stockholders previous to the meeting at which they were asked to vote on the acceptance or rejection of the offer of the Anaconda company to buy the Alice property. I did not have specific information concerning the property from Mr. Buzo (for years Superintendent of the Alice company), but I had general information. Mr. Buzo did not talk enthusiastically about the property as I remember it, but he was very anxious to have the Alice property fall into the hands of some-

one who had money enough or could find money enough to open it up and develop it in the hope that something could be developed to make it a valuable property. So far as I was able to judge, he gave me whatever information he had concerning the property."

We find in the record no evidence that Ryan ever conveyed to any of the complaining minority stockholders of the Alice company any of the information concerning its property or its probable or possible value communicated to the Anaconda company by the experts referred to in the foregoing testimony. And certainly there is no such information contained in the circular letter to the stockholders of the Alice company, referred to by the witness as having been signed by him and its other directors, advising the acceptance of the proposition of the Anaconda company, which circular letter we insert:

"NEW YORK CITY, NEW YORK, April 27, 1910.

"To the Stockholders of the Alice Gold & Silver Mining Company:

"You are advised that a special meeting of the stockholders of the company has been called to meet at the principal office of the Company in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, 1910, at the hour of 10 o'clock A. M. The purpose of the meeting is to submit to the consideration of the stockholders, and to have them pass upon, a proposed contract of sale between the Company and the Anaconda Copper Mining Company of Montana. The proposition, if approved by the holders of the necessary amount of the capital stock of the Company, will result in the sale and transfer of all of the property and assets of the Company to the Anaconda Copper Mining Company, in consideration of the issuance and payment by the latter company of 30,000 shares of the full paid capital stock of said Company. In submitting this proposition to the stockholders and advising its acceptance, the management wishes to state that the Alice Gold & Silver Mining Company was incorporated under the laws of Utah on the 16th day of March, 1880, with a capital stock of \$10,000,000.00, divided into 400,000 shares, having a par value \$25.00 each all of which stock was issued in acquiring certain mining properties near Walkerville, in the County of Silver Bow, State of Montana. The mines of the Company were operated actively from 1880 until 1893, and afterwards for a short period during the years 1897 and 1898. The total dividends which were paid from March 15, 1881, to March 15, 1898, amounted to \$1,075,000.00. During the period of active operation silver was the chief product of the Company. During the year 1893, because of the market decline in the market price of silver and the lean values of the ores which were developed in the lower levels of the Company's mines, it became necessary to close down its property, and practically no operations have since been conducted by the Company and no revenues have been received except a comparatively small sum realized from the royalties paid by lessees working in certain portions of the older levels of the mines. As a result of closing down

the mines of the Company the same filled with water up to the 700 foot level, and the workings between that level and the 1500 level have been and now are inaccessible. A balance Sheet showing the condition of the Company on March 31, 1910, and a Profit and Loss Account, showing the result of such operations as have been conducted by the present management, are attached hereto and marked respectively Exhibits A and B. In 1908 the Butte Coalition Mining Company acquired by purchase from the former owners a majority of the stock of the Company. The market price of silver, taken in connection with the low grades of the ores exposed, has been such that the mines of the Company could not be worked at a profit, and in view of the depleted condition of the treasury of the Company the management has not felt justified in endeavoring to carry out any extensive system of prospecting or development work. Recently the stockholders of other companies, to wit: the Boston and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company, Big Blackfoot Lumber Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company, Red Metal Mining Company, Diamond Coal & Coke Company, and Parrot Silver & Copper Company, have taken steps to effect a consolidation of all the property owned by them, by a sale of their respective properties to the Anaconda Copper Mining Company, for certain amounts of the capital stock of the Anaconda Copper Mining Company, and the last named Company, in pursuance of the same general plan, has offered to purchase all of the property of this Company, paying therefor 30,000 shares of the capital stock of the Anaconda Copper Mining Company. By the consolidation above referred to the Anaconda Copper Mining Company has acquired the most important mining ground in the Butte District, and it is believed that it will be enabled, through the adoption of general systems of drainage, ventilation and development, to prospect in an economical manner the undeveloped portion of the property thus acquired. This Company is the owner of comparatively large areas of mining property which lie contiguous to some of the property belonging to the Anaconda Copper Mining Company, and which it is believed are of sufficient value to justify prospecting and development, provided the same can be carried on by a company strong enough financially to (bear the) burden of so doing. In addition to the cost which the resumption of active mining operations would entail, you are advised that it would be necessary to construct and equip new mills or reduction works of modern design and suitable character to handle the ores of the Company economically, provided such ores were encountered in sufficient quantity to justify the continuance of mining operations. Such action would require the expenditure of large sums of money, at present unavailable. You are therefore advised that in the opinion of the management it would be to the best interests of this Company and its shareholders to accept the proposition of the Anaconda Copper Mining Company. You are, therefore, requested to sign the accompanying proxy and return it in the enclosed envelope whether you expect

to be present at the meeting or not, in order that the stock owned by you may be represented and voted at the special meeting of the stockholders. Very respectfully, John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, E. S. Ferry, Board of Directors."

There is in the foregoing letter not only none of the information derived by Ryan from the experts of the Anaconda and its associated companies respecting the actual probable or possible value of the properties of the Alice company, nor any intimation of any intention of the board of directors of the latter company to wind up its business and obtain its dissolution; and, as a matter of fact, as the evidence shows, no move to that end was made until about one year after the sale and conveyance of all of the property of the company.

The court below, having found that an adequate price had not been paid for the properties in question, for which reason the appellees had not sustained the burden resting upon them to show that the sale was a fair one, and having held that it could not be legally made in consideration of stock in the Anaconda company, based upon its interpretation of the decision of the Supreme Court in the case of *Mason v. Pewabic Mining Company*, 133 U. S. 50, entered an interlocutory decree to the effect that the entire property be offered at public sale by the master of the court, upon prescribed notice, and that if an amount in excess of the value of the stock given for it by the Anaconda Company—which the court fixed at \$1,500,000—was not bid for it, the sale should stand confirmed; and it having subsequently been shown to the court that at the offer of the property at public sale as provided in and by the interlocutory decree no bid was made, the court entered the final decree affirming the sale.

I am unable to see that the decision of the Supreme Court in *Mason v. Pewabic Mining Company* in any respect sustains such decree.

In that case a corporation of Michigan, with a capital stock of 20,000 shares of the par value of \$25.00 each, afterwards increased to 40,000 shares, had become dissolved by the expiration of its charter on April 4, 1883, notwithstanding which fact the directors, who were elected in March of that year, continued the ordinary business of the corporation, and, among other things, made an assessment of \$88,000 on the capital stock, which was paid. On the 28th of March of the following year, at a meeting called "for the election of directors and for other purposes," these resolutions were adopted, against the vote and the protests of the complainants to the suit who were minority stockholders of the old company:

"Resolved: That the board of directors be authorized to sell and dispose of the property of the company for a sum not less than \$50,000; that the president and secretary be authorized to execute all conveyances necessary to carry out the contract for the sale of the property of this company made by the board of directors, and that the board of directors be, and hereby are, authorized to close up the business of the company.

"Resolved, That it is the sense of this meeting of stockholders that the property shall be sold to a new corporation, organized under the laws of Michigan, on the basis of forty thousand shares, and that the stock of such new corporation shall be issued to and received by the stockholders of this company in payment for the same, stockholders to have the right to receive (an) equal number of shares in (the) new company, if they so elect, on surrendering certificates of this company, within thirty days after April 12, 1884, and in case a stockholder does not take stock of the new corporation he is to receive his pro rata share in money."

The vote in favor of the adoption of the resolutions was 27,919 shares, against 6,754 shares in the negative. A new corporation, called the Pewabic Copper Company was thereupon organized under the laws of the same state, also with a capital stock of 40,000 shares at \$25.00 each, which was taken up by the defendant corporations, who, with two others, were named as the first directors, being the same persons who controlled the old company. The third article of this association declared that no cash is actually paid on the capital stock—the cash value of real and personal property conveyed to the company contemporaneously with its organization being the sum of \$50,000. The bill prayed for an injunction and restraining order forbidding the defendants from carrying out the purpose of transferring the property of the Pewabic Mining Company to the new corporation, and for the appointment of a receiver to take charge of the effects of the old company, that they might be sold, the debts of the company paid, and the remainder of the proceeds distributed among its stockholders. Upon the issues made and proof taken the trial court decreed that the business of the Pewabic Mining Company be wound up and that all of its assets "be sold at public vendue for cash to the highest bidder: Provided, That if at such sale the bid for the aggregate of the property and assets should not be in excess of \$50,000 above the amount of the debts of the company existing at the time of the sale, then the arrangement for the sale of such property, made at the stockholders' meeting in Boston on the 26th day of March, 1884, as set up in defendants' answer, shall be carried out under the direction of the special master, hereinafter designated, and as provided by the resolution adopted by the stockholders at said meeting." The decree preceded to refer the cause to a special master for these purposes and with these powers: That he should ascertain the assets, property, and debts of the company, and that after ascertaining and reporting the same to the court the master should proceed, upon giving the required notice, to sell the property at public sale to the highest bidder in one body, with a provision to the effect that if the highest bidder for such property at such sale should amount to more than \$50,000 over and above the indebtedness of the company, "then that the arrangement for the sale of said property, made at said meeting of the stockholders at Boston, must be set aside and held to be null and void, and the Pewabic Mining Company be enjoined perpetually from selling to the Pewabic Copper Company, and that company is enjoined from receiving its trans-

fer of the property." The decree further declared that the directors of the old company "are not liable to pay to complainants and other stockholders any money received by them since the expiration of the charter of said Pewabic Mining Company, April 4, 1883, and that an accounting by said defendant directors is hereby denied as to such expenditure made by them after the expiration of the charter."

This last provision of the decree in favor of the directors of the old company was reversed by the Supreme Court, while the other portions of the decree were by it affirmed—the court saying:

"With regard to the main question, the power of the directors and of the majority of the corporation to sell all of the assets and property of the Pewabic Mining Company to the new corporation under the existing circumstances of this case, we concur with the Circuit Court. It is earnestly argued that the majority of the stockholders—such a relatively large majority in interest—have a right to control in this matter, especially as the corporation exists for no other purpose but that of winding up its affairs, and that, therefore, the majority should control in determining what is for the interest of the whole, and as to the best manner of effecting this object. It is further said that in the present case the dissenting stockholders are not compelled to enter into a new corporation with a new set of corporators, but have their option, if they do not choose to do this, to receive the value of their stock in money. It seems to us that there are two insurmountable objections to this view of the subject. The first of these is that the estimate of the value of the property which is to be transferred to the new corporation and the new set of stockholders is an arbitrary estimate made by this majority, and without any power on the part of the dissenting stockholders to take part, or to exercise any influence, in making this estimate. They are therefore, reduced to the proposition that they must go into this new company, however much they may be convinced that it is not likely to be successful, or whatever other objections they may have to becoming members of that corporation, or they must receive for the property which they have in the old company a sum which is fixed by those who are buying them out. The injustice of this needs no comment. If this be established as a principle to govern the winding up of dissolving corporations, it places any unhappy minority, as regards the interest which they have in such corporation, under the absolute control of a majority, who may themselves, as in this case, constitute the new company, and become the purchasers of all the assets of the old company at their own valuation. The other objection is that there is no superior right in two or three men in the old company, who may hold a preponderance of the stock, to acquire an absolute control of the whole of it, in the way which may be to their interest, or which they may think to be for the interest of the whole. So far as any legal right is concerned, the minority of the stockholders has as much authority to say to the majority as the majority has to say to them, "We have formed a new company to conduct the business of this old corporation, and we have fixed the value of the shares of the

old corporation. We propose to take the whole of it and pay you for your shares at that valuation, unless you come into the new corporation, taking shares in it in payment of your shares in the old one." When the proposition is thus presented, in the light of an offer made by a very small minority to a very large majority who object to it, the injustice of the proposition is readily seen; yet we know of no reason or authority why those holding a majority of the stock can place a value upon it at which a dissenting minority must sell or do something else which they think is against their interest, more than a minority can do."

The court proceeded to liken the rights of the parties to that suit in regard to the assets of the dissolved corporation to those of a partnership on its dissolution, and concluded its opinion upon that point as follows:

"We do not say that there may not be circumstances presented to a court of chancery, which is winding up a dissolved corporation and distributing its assets, that will justify a decree ascertaining their value, or the value of certain parts of them, and making a distribution to partners or shareholders on that basis; but this is not the general rule by which the property in such cases is disposed of in the absence of an agreement."

In all this I see nothing to justify the decree appealed from. There the corporation had ceased to exist. Its former directors had become trustees, whose duty it was to reduce the property of the corporation with all reasonable diligence into cash, and after paying the legitimate indebtedness to distribute the proceeds remaining among the stockholders. Instead of doing so they organized a new corporation to take over the property of the old one and offered to award to the dissenting stockholders their proportionate shares of the stock of the new company, or to pay them for it on the basis of \$50,000 for the entire property. In that case the minority stockholders of the corporation that had ceased to exist asked that its property be sold and the court so decreed, but in doing so directed that in the event no bid in excess of \$50,000 should be received that the resolution that has been referred to should be carried out and payment made to the complainants on the basis of \$50,000 as the value of the company's property—the defendants by their answer having continued their offer to pay on that basis. That portion of the decree awarding the complainants the protection mentioned does not appear to have been appealed from by either party, and was not reviewed by the Supreme Court. While affirming the order directing the sale, as has been seen, that portion of the decree appealed from which denied to the complainants an accounting by the trustees of the dissolved corporation was reversed.

Here the complainants were minority stockholders of an existing corporation, not asking for, but protesting against, the sale of its property. I think the cases wholly unlike and am of the opinion that the judgment should be reversed and the case remanded to the court below with directions to enter a decree for the return to the Anaconda Copper Mining Company of the 30,000 shares of its

capital stock, together with any and all dividends that have been paid thereon, and annulling the sale and conveyance to it of the properties of the Alice Gold and Silver Mining Company, the appellants to recover costs of suit.

How a sale of all of the property of a private corporation, for an inadequate price and which is otherwise unfair and wholly illegal, made by its board of directors with the consent of a majority of the stockholders but in spite of the dissent of a minority of them, can be subsequently rendered legal by offering the property at public sale to see if at such sale it will bring more, I am unable to understand. The offer at public auction of property of the nature of that here involved, even if there be bidders, is, in my judgment, but little, if any, test of its real value. Many courts have refused to permit evidence of what property brought at a judicial sale at public auction to be given in proof of value, while others, although admitting it, refer to it as only slight evidence. (*Martinett v. Maczkevez*, 35 Atl. 662; *In re McAusland*, 235 Fed. 189, 190; *Rickards & Co. v. Bemis & Co.*, 78 S. W. 239; *Street Ry. Co. v. Walsh*, 94 S. W. 860.)

In the present case there was no bidder at all—thus, according to the decision of a majority of this court, there was rendered legal and valid the sale and conveyance of the entire property of an existing corporation, which sale and conveyance it was found and adjudged by the court below, and is found and adjudged by this court, were at the time they were made unfair and wholly illegal.

From that conclusion I respectfully dissent.

[Endorsed:] Dissenting Opinion. Filed Oct. 1, 1917. F. D. Monekton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Decree.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Alphons Dreyfoos, Eugene Blum, David C. Goldberg, and Eugene Bascho, Co-Partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants.

VS.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

Decree U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the District of Montana.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Montana, and was duly submitted.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellees and against the appellants.

It is further ordered, adjudged and decreed by this Court that the appellees recover against the appellants for their costs herein expended and have execution therefor.

[Endorsed:] Decree. Filed and Entered October 1, 1917, F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

GEDDES et al., Appellants,

vs.

ANACONDA COPPER MINING CO., a Corporation, Appellees.

Order Staying Issuance of Mandate Under Rule 32.

Good cause appearing therefor,

It is hereby ordered, adjudged and decreed that plaintiffs in error may have until the 20th day of November, 1917, within which to prepare, serve and file herein their petition for rehearing.

And it is further ordered, adjudged and decreed that the mandate of the above entitled court in this matter be and the same is hereby stayed until the 20th day of November, 1917.

Dated: October 30, 1917.

WM. H. HUNT,

United States Circuit Judge.

[Endorsed:] Order Staying Issuance of Mandate Under Rule 32. Filed October 30, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831. In Equity.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

Petition for Appeal.

To the United States Circuit Court of Appeals for the Ninth Circuit, and to the Honorable Justices thereof:

The above named appellants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos;

and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, and Leopold Freund and Alice Frey, feeling aggrieved by the decree rendered by the above entitled court in the above entitled matter on the second day of October, A. D. 1917, by hereby, jointly and severally, appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith and they pray that their appeal be allowed and that Citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was based, duly authenticated be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of them be made.

T. J. WALSH,

C. B. NOLAN,

Solicitors and Counsel for Appellants.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831. In Equity.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

Assignment of Errors.

And now come Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, appellants, by Thomas J. Walsh, Esq., and C. B. Nolan, Esq., their solicitors and counsel, and make and file this their assignment of error.

I.

The Circuit Court of Appeals of the United States for the Ninth Circuit erred in holding that though the acquisition of the property

of the Alice Gold and Silver Mining Company by the Anaconda Copper Mining Company was in violation of the Sherman Anti-trust Act, the complainants could not avail themselves in this suit of such fact.

II.

Said Court erred in holding that the complainants could not be heard to assert or contend that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company referred to in the bill was made in violation of the Sherman anti-trust act.

III.

Said Court erred in holding in effect that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company and the deed evidencing the same referred to in the bill were not made in violation of the Sherman anti-trust act.

IV.

Said Court erred in holding that a majority of the stockholders of the Alice Gold and Silver Mining Company as against the dissenting complainants, being stockholders, through its board of directors or otherwise, or that any number of stockholders as against any dissenting stockholders, might make a valid transfer of all the property of that company.

V.

Said Court erred in holding that the transfer of all the property of the Alice Gold and Silver Mining Company, despite the protest or dissent or without the concurrence of complainants, to the Anaconda Copper Mining Company or to any transferee is authorized as to them by the laws of the State of Utah.

VI.

Said Court erred in holding that the Utah statute of 1905 referred to in the opinion herein by Ross, Circuit Judge, authorized the board of directors of the Alice Gold and Silver Mining Company with the consent of the majority of the stockholders to sell and dispose of all the property of that corporation, as against dissenting stockholders.

VII.

Said Court erred in holding that the said statute, as against the complainants being stockholders of the Alice Gold and Silver Mining Company, a corporation of the said state of Utah in existence prior to the enactment of said statute, is not in contravention of the

constitution of the United States in the provision thereof which forbids any state to pass any law impairing the obligation of contracts and it was error not to hold that such statute is, as against the complainants, violative of such provision of the constitution of the United States.

VIII.

Said Court erred in holding that it was not ruled in the Supreme Court of Utah in the case of *Garey v. St. Joe Mining Company* (32 Utah 497, 91 Pac. 369) that if such statute in terms authorizes such transfer it is violative of the said provision of the constitution of the United States, and said Court erred in not holding that it was decided in said case that the statute, if it authorizes such transfer, is so violative of such provision.

IX.

Said Court erred in not finding that the Alice Gold and Silver Mining Company had no power or authority to take, receive or hold stock of the Anaconda Copper Mining Company or any other corporation, or to receive or hold the stock of said last mentioned company transferred to it as recited in the bill of complaint.

X.

Said Court erred in not finding that there was no purpose entertained by the Alice Gold and Silver Mining Company at the time it acquired the stock of the Anaconda Copper Mining Company as recited in the bill, whatever purpose may have been in the minds of some of its directors or stockholders, to apportion such stock among its stockholders, or the cash value of the share of any stockholder preferring cash, or to wind up the business or disincorporate the company.

XI.

Said Court erred (in view of its finding that the price paid by the Anaconda Copper Mining Company for the property of the Alice Gold and Silver Mining Company was inadequate, that information in the possession of the purchaser affecting the value of the property was not disclosed to the stockholders of the selling company, and that the burden resting upon the first above mentioned company and the defendants to show that an adequate price had been paid and that the sale was a fair one had not been met) in not holding that the sale and transfer and the deed evidencing the same referred to in the bill each is void.

XII.

Said Court erred in not holding that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda

Copper Mining Company and the deed evidencing the same, attacked by the bill, each is void:

(1) Because the same was made in violation of the Sherman Anti-trust Act.

(2) Because the Alice Gold and Silver Mining Company had no power to dispose of all of its property as against the complainants or any of them without their consent.

(3) Because of the relations subsisting between those controlling the affairs of the Alice Gold and Silver Mining Company and the affairs of the Anaconda Copper Mining Company, they being substantially the same persons, a valid purchase could not be made by the last named company except on full disclosure and the payment of an adequate price, and there was not full disclosure, neither was the price paid adequate, and because the burden was upon the said last named company to establish in this suit full disclosure and the payment of an adequate price, and neither fact was established by the evidence.

(4) Because the transfer and deed assailed by the bill were each made in violation of the Sherman anti-trust act.

XIII.

Said Court erred in not entering, or directing to be entered, a decree annulling the deed referred to in the bill of complaint transferring the property of the Alice Gold and Silver Mining Company upon the return by, and directing the return by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company of the stock received in payment for such property together with the accrued dividends thereon.

XIV.

Said Court erred in holding that the decree entered in the trial court was justified or required by the decision of the Supreme Court of the United States in the case of *Mason v. Pawabic Mining Company*, 133 U. S. 50.

XV.

Said Court erred in affirming the decree of the United States District Court for the District of Montana, which decree was erroneous for the reasons assigned in the Assignment of Errors on the appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, which assignment is hereby, by this reference, made a part of this assignment on appeal to the Supreme Court of the United States.

Wherefore, the said appellants, Peter Golden, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascio, Co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice

Frey, pray that the judgment of said United States Circuit Court of Appeals for the Ninth Circuit be reversed and that it be ordered that the said deed be annulled upon the return to the Anaconda Copper Mining Company of the stock received by the Alice Gold and Silver Mining Company as the consideration for the same with the dividends paid to it thereon.

T. J. WALSH,
C. B. NOLAN,
Solicitors for Appellants.

f. J. WALSH,
Counsel for Appellants.

[Endorsed:] Petition for Appeal to Supreme Court U. S. and Assignment of Errors. Filed November 19, 1917, F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831. In Equity.

PETER GEORGE, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isidor Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Baecho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Perry, Appellees.

Order Allowing Appeal to Supreme Court U. S. and Fixing Amount of Bond.

On motion of Thomas J. Walsh, Esq., and C. B. Nolan, Esq., solicitors and counsel for appellants, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed, and entered herein, be, and the same is hereby, allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is Further Ordered, That the bond on appeal be fixed at the sum of \$1000.

Dated, November 19, 1917.

WM. W. MORROW,
Judge.

[Endorsed:] Order Allowing Appeal to Supreme Court U. S. and Fixing Amount of Bond. Filed Nov. 19, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY C. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

Bond on Appeal.

Know all men by these presents: That we, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; and Leopold Freund and Alice Frey, as principals, and Massachusetts Bonding and Insurance Company, as Surety, are held and firmly bound unto the Anaconda Copper Mining Company, a Corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry in the sum of One Thousand Dollars (\$1,000.00), lawful money of the United States, to be paid to them and their representatives, executors and administrators and successors, to which payment well and truly to be made, we bind ourselves, each of us, jointly and severally, and each of our heirs, executors and administrators by these presents;

Sealed with our seals and dated this 12th day of November, 1917.

Whereas, the above named appellants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, have taken an appeal to the Supreme Court of the United States to reverse the decree of the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled case.

Now, therefore, The condition of this obligation is such that if the above named appellants shall prosecute their said appeal to effect, and answer all costs if they fail to make their appeal good,

then this obligation shall be void; otherwise to remain in full force and effect.

PETER GEDDES.	[SEAL.]
JOSEPH R. WALKER.	[SEAL.]
JOSEPH S. BAER.	[SEAL.]
HENRY S. EVERETT.	[SEAL.]
MARGARET ANN MEEHAN.	[SEAL.]
EUGENE BLUM.	[SEAL.]
ISADOR BAER.	[SEAL.]
ISAAC BLUM.	[SEAL.]
EDWARD BLUM.	[SEAL.]
ALPHONS DREYFOOS.	[SEAL.]
DAVID C. GOLDENBERG.	[SEAL.]
EUGENE BASCHO.	[SEAL.]
LEOPOLD FREUND.	[SEAL.]
ALICE FREY.	[SEAL.]

By C. B. NOLAN AND
T. J. WALSH,

Their Solicitors and Counsel.

MASSACHUSETTS BONDING AND
INSURANCE COMPANY,

By SOL. POZNANSKI, *Agent.*

Attest:

A. J. HORSKY,

Attorney in Fact.

The foregoing bond and surety approved this 19th day of November, 1917.

WM. W. MORROW,

Judge.

[Endorsed]: Bond on Appeal. Filed Nov. 19, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

Præcipe for Certified Transcript of Record on Appeal to the Supreme Court of the United States.

To the Clerk of the said Court:

SIR: Please make and furnish me with a certified transcript of the record, (including the proceedings had in said Circuit Court of Appeals), for use on appeal to the Supreme Court of the United States in the above entitled cause, the said transcript to consist of a copy of the following:

1. Printed Transcript of record on which the cause was heard in said Circuit Court of Appeals, to which will be added a typewritten copy of the following-entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz:
2. Order of Submission, entered March 12, 1917;
3. Order Directing Filing of Opinion and Dissenting Opinion, etc., entered Oct. 1, 1917;
4. Opinion and Dissenting Opinion, filed Oct. 1, 1917;
5. Decree, filed and entered Oct. 1, 1917;
6. Order Staying Issuance of Mandate, etc., filed Oct. 30, 1917;
7. Petition for and Order Allowing Appeal and fixing amount of bond;
8. Assignment of Errors;
9. Bond on appeal;
10. Order Directing Transmission of Original Exhibits to Supreme Court, U. S.
11. Original Exhibits;
12. Præcipe for Transcript of Record;
13. Certificate of Clerk, U. S. Circuit Court of Appeals to said Transcript.
14. Citation on Appeal.

T. J. WALSH AND
C. B. NOLAN,
Counsel for the Appellants.

Service of a copy of the within præcipe is admitted this 24th day of November, A. D. 1917.

L. O. EVANS,
W. B. ROGERS AND
D. GAY STIVERS,
Counsel for the Appellees.

[Endorsed:] Præcipe. Filed Dec. 4, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record Upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit do hereby certify the foregoing one thousand and thirty-eight (1038) pages, numbered from and including 1 to and including 1038, to be a full, true and correct copy of the record made pursuant to the præcipe filed by counsel for the appellants on the 4th day of December, A. D. 1917, under Rule 8 of the Rules of the Supreme Court of the United States, in the above entitled cause including the Assignment of Errors on appeal to the said Supreme Court, and of all proceedings had and of all papers, including the Opinion and Dissenting Opinion filed in said Circuit Court of Appeals in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same, together with the accompanying original exhibits, viz: Plaintiffs' No. 1, Weed Map, No. 1, Corry Map; No. 2, Corry Map; Complainants' No. 1, Goodale Map; Complainants' R. S. T. and U.; Defendants' No. 1, Corry Map; and Defendants' No. 2, Gillie or Buzzo, Blue Print, constitute the Transcript of Record upon appeal to the Supreme Court of the United States in the above entitled cause, as made and certified pursuant to the said præcipe.

I further certify that the cost of the above-mentioned Transcript

of Record amounts to the sum of Thirty (30.00) Dollars, and that the cost thereof has been paid by counsel for the Appellants.

Attest my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, in the State of California, this 7th day of December, A. D. 1917.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*,
By PAUL P. O'BRIEN, *Deputy Clerk*.

United States Circuit Court of Appeals for the Ninth Circuit.

Citation on Appeal.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

UNITED STATES OF AMERICA, ss:

To Anaconda Copper Mining Company, a Corporation, Alice Gold and Silver Mining Company, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry;
Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington in the District of Columbia on the 18th day of January, A. D. 1918, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit from a final decree filed and entered on the 2nd day of October, 1917, in said Court in that certain suit being in Equity No. 2831, wherein Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey are plaintiffs and you are defendants and appellants, to show cause, if any there be, why the decree rendered against the said appellants as in said order allowing appeal mentioned should not

be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable William W. Morrow, United States Circuit Judge of the United States Circuit Court of Appeals for the Ninth Circuit this 19th day of November, 1917, and of the Independence of the United States.

WM. W. MORROW,
*Circuit Judge of the United States Circuit Court
of Appeals for the Ninth Circuit.*

Service of a copy of the within Citation on Appeal is admitted this 24th day of November, A. D. 1917.

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,
Counsel for the Appellees.

[Endorsed:] Docketed. No. 28-1. In Equity. United States Circuit Court of Appeals for the Ninth Circuit. Peter Geddes, et al., Appellants, vs. Anaconda Copper Mining Company, a Corporation, et al., Appellees. Citation on Appeal. Filed, November —th, 1917. Filed Dec. 4, 1917. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Endorsed on cover: File No. 26,287. U. S. Circuit Court Appeals, 9th Circuit. Term No. 820. Peter Geddes, Joseph R. Walker, Joseph S. Baer, et al., appellants, vs. Anaconda Copper Mining Company, et al. Filed January 19th, 1918. File No. 26,287.

GEDDES ET AL. v. ANACONDA COPPER MINING
COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 25. Argued April 25, 26, 1919; restored to docket for reargument December 8, 1919; reargued March 3, 4, 1920.—Decided January 24, 1921.

1. The Anti-Trust Act of 1890 provided the exclusive remedies for the rights it created; and it did not enable a private party to set aside a sale because the purchaser bought in pursuance of a purpose to restrain interstate commerce in a commodity. P. 593.
2. Although the federal question which was the basis of the jurisdiction of the District Court became settled adversely to the plaintiff's contention by decisions of this court rendered in other cases after this suit was begun, the jurisdiction nevertheless continues to decide the other questions in the case. *Id.*
3. The evidence fails to show that defendants constituted in 1911, when this suit was begun, such a combination in monopoly or restraint of interstate or foreign trade in copper, within the terms of the Anti-Trust Act of 1890, as would justify granting an injunction to the plaintiff under § 16 of the Clayton Act. *Id.*
4. When the business of a purely private corporation has proved so unprofitable that there is no reasonable prospect of conducting it without loss, or when the corporation has not, and cannot obtain, the money necessary to pay its debts and to continue its business, even though it may not be insolvent in the commercial sense, the owners of a majority of the capital stock, exercising their discretion in good faith, may authorize a sale of all the corporate property for an adequate consideration, and distribute among the shareholders the net proceeds after payment of debts, even over the objection of the minority shareholders. P. 595.
5. Such a sale, if otherwise valid, will not be set aside upon the ground that the consideration is not money but shares in another corporation, if the shares received as the consideration have such an established value in a general market that the shareholder receiving them may convert them at once into a cash consideration adequate for his interest in the corporate property sold. P. 596.
6. Where the minority shareholders of a corporation seek to set aside a sale of its property to another corporation negotiated and made

590.

Opinion of the Court.

by boards of directors having a member in common, the burden is upon those who would maintain the transaction to show its entire fairness and the adequacy of the consideration. P. 598.

7. Unless clearly erroneous, a concurrent finding of the District Court and the Circuit Court of Appeals that the consideration for the sale was inadequate will be accepted by this court. P. 600.
8. When it appears from the evidence in a suit to set aside a sale that the consideration was inadequate, the court is not justified in affirming the transaction merely because no greater amount is bid upon offering the property at public auction. *Id. Mason v. Peacock Mining Co.*, 133 U. S. 50, distinguished.
9. In a suit by minority shareholders to set aside for inadequacy of consideration a sale of all the property of their corporation to another corporation for a price paid in shares of the latter's stock, held that, under the pleadings, the court, having found the price inadequate, should have set the sale aside, and was without power to depart from the parties' contract by selling the property at auction for a cash price found adequate. P. 602.

245 Fed. Rep. 225, reversed.

THE case is stated in the opinion.

Mr. T. J. Walsh, with whom *Mr. C. B. Nolan* was on the briefs, for appellants.

Mr. W. B. Rodgers, with whom *Mr. L. O. Evans* was on the brief, for appellees.

MR. JUSTICE CLARKE delivered the opinion of the court.

With formalities, which are not assailed, a special meeting of the stockholders of the Alice Gold & Silver Mining Company, by resolution, ratified a contract in writing, theretofore authorized by the board of directors and executed by the officers of the company, for the sale to the Anaconda Copper Mining Company of all the property, of every kind, of the Alice Company. The officers were authorized and directed to execute such deeds and assignments as should be necessary to complete the sale, and a deed in form conveying all of the Alice property to the Anaconda Company was executed and delivered by

then on May 31, 1910. The consideration, thirty thousand shares of the capital stock of the Anaconda Company, was paid, and the purchaser took possession of the property.

Almost a year later, on May 8, 1911, at a special meeting of the stockholders of the Alice Company, a resolution was adopted, by the vote of more than two-thirds of the issued capital stock, in favor of dissolving the corporation, and the board of directors was authorized to take the court action prescribed by the laws of Utah, under which the company was organized, to accomplish such dissolution. Suit for this purpose was instituted in the appropriate state court.

On November 6, 1911, five months after the resolution in favor of dissolution was adopted, the bill in this case was filed by minority stockholders, praying for a decree, that the deed of May 31, 1910, be declared void, that it be delivered up and cancelled, that the consideration for it be returned to the Anaconda Company, and that all court proceedings to dissolve the Alice Company be stayed pending final decree in the case. The District Court approved and confirmed the sale, and its decree was affirmed by the Circuit Court of Appeals. The case is here on appeal.

The appellants claimed in the courts below and argue here that the sale was voidable for four reasons, viz:

(1) Because the purchase was made in pursuit of the purpose of the Amalgamated Copper Company and the Anaconda Company to monopolize the production of copper in the Butte Camp and to restrain the sale of it in interstate commerce and in the markets of the world, in violation of the Sherman Anti-Trust Act;

(2) Because the owners of less than all of the capital stock of the Alice Company could not authorize the sale of all of the property of the corporation over the protest of owners of a minority of the stock;

(3) Because the Alice Company could not lawfully acquire stock in another corporation; and

(4) Because the sale was negotiated by two boards of directors, with a common membership, and for an inadequate consideration.

We shall consider these claims in the order stated.

With respect to the first contention: It is now the settled law that the remedies provided by the Anti-Trust Act of 1890 for enforcing the rights created by it are exclusive and therefore, looking only to that act, a suit, such as we have here, would not now be entertained. *Wilder Manufacturing Co. v. Corn Products Refining Co.*, 236 U. S. 165, 174; *Paine Lumber Co. v. Neal*, 244 U. S. 459, 471; *United States v. Babcock*, 250 U. S. 328, 331. But the law has become thus settled since this suit was commenced in 1911, and the lower courts, upon the allegations in the bill, properly assumed jurisdiction and disposed of the case. *Busch v. Jones*, 184 U. S. 508, 509; *Clark v. Wooster*, 119 U. S. 322, 326.

It is, however, argued that § 16 of the Clayton Act (38 Stat. 730, 737), passed in 1914, was intended to, and does, modify the prior law, as declared by this court, and, since our decision will result in remanding the cause to the lower court, we shall consider its bearing upon the case.

The applicable provision of the Clayton Act is as follows:

"Sec. 16. That any person . . . shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, . . . when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings. . . ."

The contention of the appellants is that they will suffer irreparable loss by the sale of the Alice properties to the

Anaconda Company and that the sale should therefore be enjoined because that company and the Amalgamated Copper Company constitute a combination in restraint of interstate commerce within the prohibitions of the Sherman Anti-Trust Act.

The Amalgamated Copper Company, organized in 1899, is a holding company, and in 1911, when this case was commenced, it controlled by capital stock ownership the Anaconda Company which, in turn, held the title to the physical property which had been owned by other corporations, the union of which in this manner in the Amalgamated and Anaconda Companies constituted the alleged unlawful combination in restraint of interstate trade or commerce.

The evidence in the case renders it probable, that the promoters of the Amalgamated Company, when it was organized in 1899, entertained schemes or dreams of controlling the supply and price of copper in the interstate markets of this country and in the markets of the world, and that they did what they could to make that company rich and powerful.

But we are dealing with the Anaconda Company as it was in 1911 and with the extent to which its control of production and of prices appears in the record before us.

There is evidence that the total production of copper in the United States and Alaska, in 1899, was 581 million pounds, and of the Anaconda Company one million pounds, (probably an error, 100 million pounds being intended); but the total production of the world at that time is nowhere stated. The production in the United States in 1910, the year before the suit was brought, was 1,086 million pounds, and of this the Butte Camp, in which there were several mines other than those of defendants, produced 286 million pounds, or approximately 22 per cent. Here again there is no statement as to the total production of the world for that year.

Whatever the fact may have been, it is obvious that from such evidence as this it is not possible to determine to what, if to any substantial extent, the defendants restrained or monopolized the production of copper in the United States, much less in the world.

The evidence with respect to price control, although meagre, is more definite. The average price of copper in 1899, the year before the Amalgamated Copper Company was organized, was 17.6 per pound; in 1900 it was 16.1; in 1902, 11.6; in 1904, 12.8; in 1907, 20; in 1908, 13.2; in 1909, 12.98; 1912, 16.34; and in 1913, the last year for which the price is given, 15.26 cents.

It is obviously impossible to say that these fluctuating prices prove monopolistic control of the price of copper by the defendants.

No claim is made that the Anaconda Company restrained or restricted the production of copper, but so far as there is any evidence at all upon the subject it is to the effect that it maintained and perhaps increased the production in the Butte Camp.

Upon the case here made by the evidence it is impossible to conclude that the defendants constituted in 1911 such a combination, within the terms of the Anti-Trust Act, as would justify the granting of an injunction to the plaintiffs even under the provisions of § 16 of the Clayton Act, which we have quoted.

The decree of the lower courts as to this first claim must be affirmed.

The second contention is that the owners of less than all of the capital stock of the Alice Company could not authorize the sale of all of the property of the corporation over the protest of owners of a minority of the stock.

It is, of course, a general rule of law that, in the absence of special authority so to do, the owners of a majority of the stock of a corporation have not the power to authorize the directors to sell all of the property of the company and

thereby abandon the enterprise for which it was organized. But to this rule there is an exception, as well established as the rule itself, viz: that when, from any cause, the business of a corporation, not charged with duties to the public, has proved so unprofitable that there is no reasonable prospect of conducting the business in the future without loss, or when the corporation has not, and cannot obtain, the money necessary to pay its debts and to continue the business for which it was organized, even though it may not be insolvent in the commercial sense, the owners of a majority of the capital stock, in their judgment and discretion exercised in good faith, may authorize the sale of all of the property of the company for an adequate consideration, and distribute among the stockholders what remains of the proceeds after the payment of its debts, even over the objection of the owners of the minority of such stock. 3 Thompson on Corporations (2nd ed.), §§ 2424-2429; Noyes on Intercorporate Relations, § 111; 3 Cook on Corporations (7th ed.), § 670, p. 2170, note.

The rule that owners of a majority of the stock may not authorize the sale of all of the property of a going and not unprofitable company, rests upon the principle that exercise of such power would defeat the implied contract among the stockholders to pursue the purpose for which it was chartered. But this principle fails of application when a business, unsuccessful from whatever cause, is suspended without prospect of revival, and the law recognizes that under such conditions the majority stockholders have rights as well as the minority and that it should not require the former to remain powerless until the creeping paralysis of inactivity shall have destroyed the investment of both.

The case before us is a typical one for the application of this exception to the general rule. The Alice Company was organized in 1880, under the general incorporation laws of the then Territory of Utah, with authority

to buy, sell, lease, hold, own and operate mines, mining claims, etc., with many enumerated incidental powers. It acquired the mining properties in controversy in this case and conducted prosperously the mining chiefly of silver ores, until 1893, when its business ceased to be profitable and was suspended. Extensive shafts and underground workings were permitted to fill with water and for seventeen years before the sale the only business done by the company was leasing the upper workings of the old mines, and limited parts of the surface for shallow workings, to "tributors," who operated in such a small way that, although the expenses of the company, chiefly for caretakers, were very small, its income was less, so that when the sale was made an indebtedness of about \$35,000 had accumulated. The stock of the company was non-assessable, it had no resources but the real estate which was sold to the Anaconda Company, and the evidence is clear that to re-open and operate the mines on its property, or to open new mines, would have been very expensive and the prospect of profitable operation of them wholly problematical. Although its properties had a large speculative value, and therefore the company cannot be said to have been insolvent, yet it must be accepted as established by the evidence that there was no reasonable prospect of the company's being able to profitably resume the mining business for which it was incorporated, and that the only way in which the stockholders could realize anything from their investment was by sale of its property. Under such circumstances as these the sale of all of the property of the company, if authorized, in good faith and for an adequate consideration, by the owners of a majority of the stock would be a valid sale, which could not be defeated or set aside by the minority stockholders.

It is next argued that the sale here in controversy is void for the reason that the Alice Company could

not lawfully acquire and hold title to the stock in the Anaconda Company in which the consideration for the sale was paid.

Here again the general rule is that while, under the circumstances of this case, a sale of all of the property of a corporation could be authorized by the owners of less than all of the stock for an adequate consideration, it must be for money only, for the reason that the minority stockholders may not lawfully be compelled to accept a change of investment made for them by others, or to elect between losing their interests or entering a new company.

But it has been suggested that this rule, also, should be subject to the exception that when stock which has an established market value is taken in exchange for corporation property, it should be treated as the equivalent of money and that a sale otherwise valid should be sustained. *Noyes, Intercompany Relations*, § 120, and cases cited. We approve the soundness of such an exception. It would be a reproach to the law to invalidate a sale otherwise valid because not made for money, when it is made for stock which a stockholder receiving it may at once, in the New York or other general market, convert into an adequate cash consideration for what his holdings were in the corporate property.

In this case the trial judge determined without difficulty the market value of the stock received in payment for the Alice properties, and it is, of course, public knowledge that there was a wide and general market for Anaconda stock. This third contention of appellants must be denied.

Finally, it is argued that the sale of the Alice properties is void because negotiated and made by two boards of directors having a member in common and for an inadequate consideration.

John D. Ryan at the time of the sale was president and a director of the Alice Company; he was also a director

500.

Opinion of the Court.

and general manager of the Anaconda Company and had been its president from 1903 to 1909; he was elected a director and president of the Amalgamated Copper Company in 1909, and had been a director of each of the subsidiary companies of the combination prior to that year. In 1905 he obtained an option on the majority of the Alice stock for \$600,000, and carried it until it was purchased by the Butte Coalition Company, an Amalgamated subsidiary, of which he was a director, and that company voted a majority of the Alice stock in favor of the disputed sale.

The record shows beyond controversy that Ryan was the representative of the chief investors in the enterprise involved in this litigation, that he dominated the conduct of the practical administration of the affairs of the Amalgamated and Anaconda Companies, and that he very certainly was in control of the boards of directors of the companies which were parties to the sale of the Alice properties.

The relation of directors to corporations is of such a fiduciary nature that transactions between boards having common members are regarded as jealously by the law as are personal dealings between a director and his corporation, and where the fairness of such transactions is challenged the burden is upon those who would maintain them to show their entire fairness and where a sale is involved the full adequacy of the consideration. Especially is this true where a common director is dominating in influence or in character. This court has been consistently emphatic in the application of this rule, which, it has declared, is founded in soundest morality, and we now add in the soundest business policy. *Twin-Lick Oil Co. v. Marbury*, 91 U. S. 587, 588; *Thomas v. Brownville, Ft. Kearney & Pacific R. R. Co.*, 109 U. S. 522; *Wardell v. Railroad Co.*, 103 U. S. 651, 658; *Corsicana National Bank v. Johnson*, 251 U. S. 68, 90.

The District Court found that the price agreed to be paid by the Anaconda Company was not an adequate one and the Circuit Court of Appeals refused to disturb that finding. With this conclusion we agree, applying the settled rule of this court that in suits in equity a concurrent finding by two courts on a question of fact will be accepted unless it be clear that their conclusion is erroneous. *Baker v. Schofield*, 243 U. S. 114, 118, and cases cited.

But the District Court, notwithstanding this finding of inadequacy of price, did not set the sale aside but ordered that the Alice properties should be offered at public auction by a master and that if no bid should be received for an amount greater than that which the Anaconda Company had agreed to pay, the sale should be confirmed. The offer at public sale was made, no bid was received, and the private sale to the Anaconda Company was thereupon confirmed. The Circuit Court of Appeals, by a divided court, affirmed that decree.

Both courts relied upon *Mason v. Pewabic Mining Co.*, 133 U. S. 50, as authority for approving the sale for a price which they found was inadequate, after a greater amount could not be obtained for the property when offered at public sale, and in this we think they fell into error.

In the *Pewabic Case* the charter period of the corporation having expired, a majority of the stockholders favored the organization of a new company, with the same amount of capital stock as the old, to take over the whole of its property and that there should be allotted to the stockholders the same number of shares which they held in the old company or, in the alternative, that those who did not desire the stock should receive the value of their shares computed on a basis of \$50,000 for the entire property of the company. The minority stockholders favored sale of the property and division of the proceeds.

590.

Opinion of the Court.

On bill filed by the minority stockholders the Circuit Court enjoined the transfer to the new company and ordered a public sale of the property by a master, with a proviso in the decree that if no bids were offered in excess of \$50,000 above the debts of the company then the proposal of the majority should be carried into effect under the direction of the master. Before the property was offered for sale each of the parties appealed to this court from separate parts of the decree. On that appeal, in addition to a question of accounting, not material here, this court considered and decided only the question, whether on such a winding up of the affairs of a corporation the majority of the stockholders could lawfully compel the minority to either take stock in a new company or accept for their stock a value to be fixed by the majority. No mention is made in the opinion of the court of the alternative character of the order of sale and, although it was subsequently shown that the price proposed was an inadequate one, there had not been any finding by the lower court that such was the fact when the case was decided here. It is probable that there was no objection to this feature of the decree. The minority stockholders, praying, as they were, for a public sale, for obvious reasons would not object to it, and the contention of the majority was that no sale at all should be ordered but that their reorganization plan should be adopted. The decree of the Circuit Court that the property should be sold at public sale was confirmed without any reference being made to the action ordered if the upset price should not be obtained and we must conclude that that part of the decree was not considered by this court.

As an original proposition, we cannot think that the amount offered for property at a public sale for cash, is such a measure of its value that the failure to obtain a bid at such sale for more should be accepted by courts as a sufficient reason for affirming a sale for a price which they

found, on other evidence, to be inadequate. In business life forced sales for cash are such a last resort for obtaining money that a sale "under the hammer" is synonymous with a sale at a sacrifice and prices obtained at such sales have usually been rejected by courts when tendered as evidence of value.

In this case, from evidence as to the character of the Alice properties, their location and surroundings, and from the opinions of experts, the trial court concluded that the price paid for them was inadequate, and we cannot doubt that from like or other evidence a more trustworthy conclusion could be obtained as to what their value was than would be derived from an offer at a public sale for cash.

To this it must be added that the resolutions of the Alice Company to sell and of the Anaconda Company to purchase were for a price named to be paid and received in designated stock. Neither contemplated a public offering of the properties and that a sale should be made at another price, greater than an amount decreed by the court, if it should be offered. Under the pleadings the court had power to confirm the sale if it was found to have been lawfully made, but only upon the terms on which the parties had contracted to make it and when the price was found to be inadequate, a decree should have been entered vacating and setting it aside, as prayed for by the appellants.

It results that the decree of the Circuit Court of Appeals must be reversed and the case remanded to the District Court for further proceedings in conformity with this opinion.

Reversed and remanded.

MR. JUSTICE McREYNOLDS concurs in the result.